

EXHIBIT C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

SECURITIES AND EXCHANGE)
COMMISSION,)
Plaintiff,)
vs.) No. 06 CV 2621 (LTF) (DFE)
ANDREAS BADIAN, JACOB)
SPINNER, MOTTES DRILLMAN,)
JEFFREY "DANNY" GRAHAM,)
POND SECURITIES)
CORPORATION d/b/a POND)
EQUITIES, EZRA BIRNBAUM)
and SHAYE HIRSCH,)
Defendants.)
_____)

DEPOSITION OF JOHN LLANES

Chicago, Illinois

Monday, November 21, 2011

Reported by:

PAULA CAMPBELL, CSR, RDR, CRR, CCP

JOB NO. 44026

<p style="text-align: right;">Page 2</p> <p>1</p> <p>2</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8 November 21, 2011</p> <p>9 12:49 P.M.</p> <p>10</p> <p>11</p> <p>12 Discovery deposition of JOHN LLANES,</p> <p>13 held at the offices of DLA PIPER, 203 North</p> <p>14 LaSalle Street, Chicago, Illinois, pursuant to</p> <p>15 subpoena before Paula Campbell, CSR, RDR, CRR,</p> <p>16 CCP.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 3</p> <p>1</p> <p>2 A P P E A R A N C E S:</p> <p>3 SECURITIES AND EXCHANGE COMMISSION</p> <p>4 Attorneys for the plaintiff</p> <p>5 100 F Street, N.E.</p> <p>6 Washington, D.C. 20549</p> <p>7 BY: KENNETH J. GUIDO, ESQ.</p> <p>8</p> <p>9 DLA PIPER</p> <p>10 Attorneys for the defendant Andreas Badian</p> <p>11 2000 University Avenue, 1st Floor</p> <p>12 East Palo Alto, CA 94303</p> <p>13 BY: JEFFREY B. COOPERSMITH, ESQ.</p> <p>14</p> <p>15 ROSENTHAL COLLINS GROUP</p> <p>16 Attorneys for the deponent</p> <p>17 216 West Jackson Boulevard, Suite 400</p> <p>18 Chicago, IL 60606</p> <p>19 BY: MICHAEL CONTI, ESQ.</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 4</p> <p>1 J. LLANES</p> <p>2 REPORTER: Would you please raise your</p> <p>3 right hand.</p> <p>4 J O H N L L A N E S,</p> <p>5 called as a witness, having been duly sworn,</p> <p>6 was examined and testified as follows:</p> <p>7 EXAMINATION</p> <p>8 BY MR. COOPERSMITH:</p> <p>9 Q. Good morning (sic), Mr. Llanes.</p> <p>10 Am I saying your name right?</p> <p>11 A. It's Llanes.</p> <p>12 Q. Llanes. Sorry about that.</p> <p>13 A. That's all right.</p> <p>14 Q. Let me introduce myself. I'm Jeff</p> <p>15 Coopersmith, and I'm at a law firm called DLA Piper,</p> <p>16 and this is a deposition in the case of SEC versus</p> <p>17 Andreas Badian and others. And I represent the</p> <p>18 defendant, Mr. Badian in this case.</p> <p>19 Do you understand that?</p> <p>20 A. Yes.</p> <p>21 Q. I just want to go over with you,</p> <p>22 Mr. Llanes, some ground rules in terms of the</p> <p>23 deposition. First of all, you've already met our</p> <p>24 court reporter who will take down every word that's</p> <p>25 spoken in the room, unless we are off the record.</p>	<p style="text-align: right;">Page 5</p> <p>1 J. LLANES</p> <p>2 Do you understand that?</p> <p>3 A. Yes.</p> <p>4 Q. And because of that it's important to give</p> <p>5 audible answers, because sometimes people in</p> <p>6 conversation tend to nod their head or say something</p> <p>7 other than yes or no, and it's important to have a</p> <p>8 more formal yes or no to the questions.</p> <p>9 Do you understand that?</p> <p>10 A. I understand.</p> <p>11 Q. Now, you've been placed under oath, and do</p> <p>12 you understand that means that you're sworn to tell</p> <p>13 the whole and complete truth?</p> <p>14 A. I do.</p> <p>15 Q. And do you understand that the oath is the</p> <p>16 same kind of oath that you take in a courtroom; just</p> <p>17 because we are in a conference room, it's no</p> <p>18 different?</p> <p>19 A. I do.</p> <p>20 Q. Okay. Now, I'll be asking you questions</p> <p>21 today, but if you don't understand a question, for</p> <p>22 any reason, you can just let me know, and I'll try</p> <p>23 to help you, or rephrase the question, or something</p> <p>24 like that.</p> <p>25 A. Okay.</p>

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Q. If you need to take a break for any reason, of course that's fine. Just let me know that as well.

A. Okay.

Q. And are you ready to give full and complete testimony today?

A. I am.

Q. Any reason why you can't do that?

A. No reason.

Q. Okay. Have you been deposed before, Mr. Llanes?

A. I have not.

Q. Have you ever given trial testimony?

A. I have not.

Q. Did you review any documents to prepare for your deposition this afternoon?

A. I reviewed two documents, yes.

Q. What did you review?

A. I reviewed -- not an e-mail, but these two documents that I pulled from past files.

Q. Okay. What are the two documents that you are referencing?

A. One of them was a copy of a note that I had written. It says the remainder of the 2001 tapes,

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all others should be with prior counsel. Questions - please do not hesitate to contact me.

Q. Okay.

A. And then the other one was a letter from Mayer Brown, just stating pretty much what the tapes that were given with this.

Q. Okay. Could I see copy of that?

A. Sure. Absolutely.

Q. Okay. We may have to make copies of these.

A. Sure.

Q. But -- in fact, what I'll do is I'll just set these aside for now, and we can make copies a little later so we don't waste time.

THE WITNESS: Do they want to see?

MR. GUIDO: I saw them over his shoulder.

MR. COOPERSMITH: We will just make copies at the next break, and then we will maybe get into those.

Q. Okay. Moving on for the moment, did you receive a copy of a subpoena in this case that brought you to our offices?

A. I did not receive a copy of a subpoena.

Q. Okay. I'm going to hand you a subpoena, and since you haven't seen it before, we will just

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consider this to be service for the subpoena.

And I know that you've never seen it before, but I just want to direct your attention to it now, and I will give a copy to your lawyer as well.

MR. CONTI: Thank you.

Q. I just want to direct your attention --

MR. GUIDO: Can we have this marked as an exhibit, please?

MR. COOPERSMITH: We could mark it. Yeah, why don't we mark it. We will call it Llanes Exhibit 1.

(Llanes Exhibit 1 marked for identification.)

BY MR. COOPERSMITH:

Q. I will just give you the marked copy, since it's now an exhibit.

MR. GUIDO: Can I have a copy?

MR. COOPERSMITH: Oh, sorry. I think, for the record, you already got a copy. Is that right, Mr. Guido?

MR. GUIDO: I don't know. I mean, I didn't have a copy of this.

MR. COOPERSMITH: It's the same copy we

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sent you via e-mail.

BY MR. COOPERSMITH:

Q. So I just want to direct your attention to the very last page of the subpoena. And since you have never seen it before, I'm also assuming that you haven't brought any documents with you today, is that right, other than the ones you just gave me a minute ago; correct?

A. No, I have not.

Q. Okay. So I just want to note that there are some document requests, and I'd ask you to pay attention to that with your counsel and, you know, get back to us when you have a chance to review those.

Let me just go through them, just so I have an idea of maybe what to expect. Looking at category No. 1, and it's the very last page of Exhibit 1. The first request asks for: "All documents and/or communications between you and the SEC, including counsel for the SEC, concerning or referencing Refco or this litigation."

Do you see that?

A. Yes.

Q. As you sit here today, do you believe you

3 (Pages 6 to 9)

<p style="text-align: right;">Page 10</p> <p>1 J. LLANES</p> <p>2 have such documents, e-mails, other correspondence,</p> <p>3 anything reflecting such communications?</p> <p>4 A. I have just -- just the declarations.</p> <p>5 Q. You mean the declarations being transmitted</p> <p>6 back and forth by e-mail?</p> <p>7 A. Correct. No, not by e-mail -- well, the</p> <p>8 final declaration is what I brought.</p> <p>9 Q. Okay.</p> <p>10 A. Right.</p> <p>11 Q. Do you have any other e-mails or other</p> <p>12 documents between you and the SEC or SEC counsel?</p> <p>13 A. I'm sure I have something on my gmail</p> <p>14 account, yes.</p> <p>15 Q. Okay. Second, it asks for: "All notes</p> <p>16 concerning communications between you and the SEC,</p> <p>17 including counsel for the SEC, concerning or</p> <p>18 referencing Refco or this litigation." That would</p> <p>19 be, for example, if you were taking notes during a</p> <p>20 telephone call, or something like that, you had with</p> <p>21 counsel for the Securities and Exchange Commission.</p> <p>22 Do you believe you have anything of that</p> <p>23 nature?</p> <p>24 A. Forgive me, I need to think about this.</p> <p>25 Q. I'm not trying to put you on the spot,</p>	<p style="text-align: right;">Page 11</p> <p>1 J. LLANES</p> <p>2 Mr. Llanes. I'm just trying to get a sense if you</p> <p>3 have any of these categories.</p> <p>4 MR. GUIDO: Objection. Speculation.</p> <p>5 A. I may have something.</p> <p>6 Q. Okay. With category three, it asks for:</p> <p>7 "All documents and/or communications concerning or</p> <p>8 referencing Refco."</p> <p>9 Do you have anything like that?</p> <p>10 A. I do.</p> <p>11 Q. Okay. No. 4, "All documents and/or</p> <p>12 communications concerning or referencing this</p> <p>13 litigation," meaning the SEC versus Andreas Badian</p> <p>14 litigation.</p> <p>15 Do you think you have anything of that</p> <p>16 nature?</p> <p>17 A. Sure. I mean with respect to the</p> <p>18 declarations, yes.</p> <p>19 Q. Okay. No. 5 asks for: "All documents</p> <p>20 and/or communications concerning or referencing</p> <p>21 IPC."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. First of all, do you know what IPC is?</p> <p>25 A. Is that the company that was -- I'll have</p>
<p style="text-align: right;">Page 12</p> <p>1 J. LLANES</p> <p>2 you answer that for me.</p> <p>3 Q. Okay. Well, I'll represent to you that</p> <p>4 it's a telephone type service company that installed</p> <p>5 some gear and service, some gear at Refco.</p> <p>6 Does that ring a bell?</p> <p>7 A. Okay, yes. Do I have documents that were</p> <p>8 concerning that?</p> <p>9 Q. Right.</p> <p>10 A. Yes.</p> <p>11 Q. Okay. No. 6 asks for: "All drafts of</p> <p>12 declarations concerning or referencing this</p> <p>13 litigation."</p> <p>14 Do you have any draft declarations?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. No. 7 asks for: "All documents</p> <p>17 sufficient to show the dates of your employment at</p> <p>18 Refco, the positions you held at Refco, and the</p> <p>19 locations where you were assigned to work while you</p> <p>20 were at Refco."</p> <p>21 Do you have anything of that nature?</p> <p>22 A. Yes, I should have something, yes.</p> <p>23 Q. No. 8, "All documents and/or communications</p> <p>24 with any former or current employee of Refco since</p> <p>25 you left employment at Refco."</p>	<p style="text-align: right;">Page 13</p> <p>1 J. LLANES</p> <p>2 Do you have anything of that nature?</p> <p>3 A. I have e-mails.</p> <p>4 Q. Okay. And No. 9 asks for: "All documents</p> <p>5 and/or communications with any representative of the</p> <p>6 United States Department of Justice or any division</p> <p>7 or affiliate thereof."</p> <p>8 Do you have anything of that nature?</p> <p>9 A. I may.</p> <p>10 Q. Okay. All right. In that case I would</p> <p>11 just ask you and your counsel to work on that and</p> <p>12 get back to me with a response.</p> <p>13 MR. GUIDO: I'd like to make a relevance</p> <p>14 objection to that request, and that is are you</p> <p>15 restricting it to this litigation or the issues</p> <p>16 in this case or, for example, it says any</p> <p>17 communications with the Justice Department or</p> <p>18 the state department?</p> <p>19 MR. COOPERSMITH: The state department --</p> <p>20 MR. GUIDO: I'm sorry, it just says United</p> <p>21 States Department of Justice. Are you</p> <p>22 restricting it to this case or is it broader</p> <p>23 than that?</p> <p>24 MR. COOPERSMITH: I'm not going to answer</p> <p>25 the question, Mr. Guido. I mean they speak for</p>

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<p>1 J. LLANES</p> <p>2 themselves.</p> <p>3 MR. GUIDO: I just put a relevance</p> <p>4 objection.</p> <p>5 MR. COOPERSMITH: Do you represent the</p> <p>6 witness today?</p> <p>7 MR. GUIDO: No, I just put a relevance</p> <p>8 objection.</p> <p>9 MR. COOPERSMITH: You can make whatever</p> <p>10 objections you like.</p> <p>11 MR. GUIDO: Thank you.</p> <p>12 BY MR. COOPERSMITH:</p> <p>13 Q. Moving on, Mr. Llanes. Before the</p> <p>14 deposition did you meet with anyone to prepare for</p> <p>15 this session today?</p> <p>16 A. I did.</p> <p>17 Q. And who did you meet with?</p> <p>18 A. I met with my counsel here.</p> <p>19 MR. CONTI: Mike Conti.</p> <p>20 A. Mike Conti. I'm sorry, Mike.</p> <p>21 Q. You guys go way back?</p> <p>22 A. We go way back. Mr. Guido and Mr. McHale</p> <p>23 from the SEC.</p> <p>24 MR. GUIDO: Who is the third name? I'm</p> <p>25 sorry, I have a hearing problem.</p>	<p>1 J. LLANES</p> <p>2 A. Mr. Guido and James McHale.</p> <p>3 Q. Okay. Is that spelled M-c-H-A-L-E?</p> <p>4 A. Correct.</p> <p>5 Q. Okay. When did you -- well, first of all,</p> <p>6 did you meet with Mr. Guido and Mr. McHale together</p> <p>7 or separately?</p> <p>8 A. Together.</p> <p>9 Q. Always -- was there only one meeting or --</p> <p>10 A. Only one.</p> <p>11 Q. Okay. And when was that meeting?</p> <p>12 A. Last Wednesday.</p> <p>13 Q. And from your understanding --</p> <p>14 A. Thursday or Wednesday, I'm sorry.</p> <p>15 Q. So it was last week?</p> <p>16 A. It was last week.</p> <p>17 Q. And what was your understanding of the</p> <p>18 purpose of that meeting?</p> <p>19 A. Just to ensure that I have my ducks in</p> <p>20 order in terms of I know what I wrote in a</p> <p>21 deposition -- or I'm sorry -- in the declaration was</p> <p>22 to be true.</p> <p>23 Q. Okay. Prior to that meeting with</p> <p>24 Mr. McHale and Mr. Guido, did you have other</p> <p>25 telephone conversations with SEC lawyers, even if it</p>
Page 16	Page 17
<p>1 J. LLANES</p> <p>2 wasn't in-person meetings?</p> <p>3 A. Yes.</p> <p>4 Q. And how many such telephone calls?</p> <p>5 A. More than five/less than ten.</p> <p>6 Q. What was the telephone call -- how long</p> <p>7 before -- strike that.</p> <p>8 How long before the meeting, in-person</p> <p>9 meeting last week, was --</p> <p>10 MR. GUIDO: Objection. He didn't say it</p> <p>11 was --</p> <p>12 MR. COOPERSMITH: If you could wait until I</p> <p>13 finish my question, Mr. Guido.</p> <p>14 MR. GUIDO: I'm sorry.</p> <p>15 Q. Prior to the meeting that you had in person</p> <p>16 with Mr. Guido and Mr. McHale last week, how long</p> <p>17 before that was the last of the telephone calls?</p> <p>18 MR. GUIDO: Objection. Misstates his</p> <p>19 testimony.</p> <p>20 A. How long before the last call or before the</p> <p>21 first call --</p> <p>22 Q. In other words, how big a gap was there</p> <p>23 between a telephone call you had and then the</p> <p>24 meeting you had in person?</p> <p>25 MR. GUIDO: Objection. Mischaracterizes</p>	<p>1 J. LLANES</p> <p>2 the testimony.</p> <p>3 A. I don't know. It was less than a week,</p> <p>4 possibly.</p> <p>5 Q. Okay. So prior to the in-person meeting</p> <p>6 you had a telephone call with Mr. Guido and</p> <p>7 Mr. McHale about a week before the in-person</p> <p>8 meeting?</p> <p>9 A. I'm sorry, the telephone calls -- they were</p> <p>10 mainly with -- before the meeting, right, which was</p> <p>11 a conference call.</p> <p>12 Q. Right.</p> <p>13 A. There was a telephone call with Mr. McHale.</p> <p>14 Those were the calls I had, the less than ten/more</p> <p>15 than five.</p> <p>16 Q. So the less than ten/more than five</p> <p>17 telephone calls, those were all with James McHale?</p> <p>18 A. Correct.</p> <p>19 Q. Had you ever spoken to Mr. Guido on the</p> <p>20 telephone?</p> <p>21 A. Goodness gracious. That had to have been,</p> <p>22 I want to say, November of 2010 is probably the last</p> <p>23 time I spoke with Mr. Guido.</p> <p>24 Q. Okay. And how long in all have you spoken</p> <p>25 to Mr. Guido?</p>

<p style="text-align: right;">Page 18</p> <p>1 J. LLANES</p> <p>2 A. I can't recall.</p> <p>3 Q. Okay. Now with regard to the meeting last</p> <p>4 week, was it an in-person meeting or a telephone</p> <p>5 conference call?</p> <p>6 A. Conference call.</p> <p>7 Q. Was anybody from the SEC physically present</p> <p>8 with you during that call?</p> <p>9 A. No.</p> <p>10 Q. So that was -- I may have misunderstood.</p> <p>11 It was a telephone conference call, not an in-person</p> <p>12 meeting?</p> <p>13 A. Correct.</p> <p>14 Q. And that conference call was last week, and</p> <p>15 Mr. Guido and Mr. McHale were both on the telephone;</p> <p>16 is that correct?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. And what -- how long did that</p> <p>19 telephone conference call last?</p> <p>20 A. Hour. About 60 minutes, maybe.</p> <p>21 Q. Okay. And what were the subjects that were</p> <p>22 discussed during that call?</p> <p>23 A. Just going through the declaration in and</p> <p>24 of itself. That's about it.</p> <p>25 Q. Did the SEC attorneys on the telephone tell</p>	<p style="text-align: right;">Page 19</p> <p>1 J. LLANES</p> <p>2 you anything about the case, or what they expected,</p> <p>3 or anything of that nature?</p> <p>4 A. No.</p> <p>5 Q. Okay. Did the SEC attorneys during that</p> <p>6 conference call that lasted around an hour last week</p> <p>7 discuss with you any particular problematic areas or</p> <p>8 things that you should be careful about during</p> <p>9 testimony, anything of that nature?</p> <p>10 A. No. No.</p> <p>11 Q. Did you express any particular concerns</p> <p>12 during the telephone call?</p> <p>13 A. Yeah, I wanted to make sure that I was</p> <p>14 recalling everything, but that was just talking out</p> <p>15 loud.</p> <p>16 Q. Okay. You wanted to make sure you recalled</p> <p>17 accurately?</p> <p>18 A. Correct.</p> <p>19 Q. And did the SEC attorneys try to help you</p> <p>20 with that?</p> <p>21 A. Oh no, no. It was you have -- you have to</p> <p>22 know what you are saying. That's --</p> <p>23 Q. Did they go over any documents with you</p> <p>24 during that call?</p> <p>25 A. No, just, again, the declaration was the</p>
<p style="text-align: right;">Page 20</p> <p>1 J. LLANES</p> <p>2 only thing that was...</p> <p>3 Q. So they did go over the prior declaration?</p> <p>4 A. Correct.</p> <p>5 Q. There were two declarations; is that right?</p> <p>6 A. Correct.</p> <p>7 Q. Can you tell me a little bit about --</p> <p>8 actually, strike that.</p> <p>9 Can you just go ahead and briefly describe</p> <p>10 your educational background.</p> <p>11 A. I was just talking to you about this.</p> <p>12 My educational background, right. I</p> <p>13 graduated high school in '88, went to Milwaukee</p> <p>14 School of Engineering for a year, and then had a</p> <p>15 few, what was it, community colleges, College of</p> <p>16 DuPage, went back to school to Loyola, then DePaul,</p> <p>17 and just said forget it all. And then just</p> <p>18 concentrated on work. And so now, as of -- as of</p> <p>19 now I am back at school at Northwestern University,</p> <p>20 SCS in the LOB program.</p> <p>21 Q. Okay. Now, your career and profession has</p> <p>22 been in the Information Technology area; is that</p> <p>23 right?</p> <p>24 A. That is correct.</p> <p>25 Q. And how did you acquire the knowledge or</p>	<p style="text-align: right;">Page 21</p> <p>1 J. LLANES</p> <p>2 training that you need for that type of position?</p> <p>3 A. Certainly at Milwaukee School of</p> <p>4 Engineering I learned about computers there, and</p> <p>5 most of it was hands on. I did some programming at</p> <p>6 DePaul University, and that was it.</p> <p>7 Q. And where did you grow up, Mr. Llanes?</p> <p>8 A. In Chicago.</p> <p>9 Q. Okay.</p> <p>10 A. And then in the western suburbs of Oswego,</p> <p>11 Illinois.</p> <p>12 Q. And so have you always lived in Chicago</p> <p>13 your whole life?</p> <p>14 A. Yes.</p> <p>15 Q. Was there any period of time when you</p> <p>16 didn't live in Chicago?</p> <p>17 A. No, residence was always here in the</p> <p>18 Chicagoland area.</p> <p>19 Q. Okay. How old are you, Mr. Llanes?</p> <p>20 A. I am 41.</p> <p>21 Q. Have you ever been convicted of any</p> <p>22 criminal offense?</p> <p>23 A. I have not.</p> <p>24 Q. Have you ever been involved in a civil</p> <p>25 lawsuit where you were the defendant?</p>

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A. I have not.

Q. Now we referenced a minute ago two declarations that you gave in your -- in this case.

Do you remember that?

A. Correct. Yes.

Q. We will go over those in a minute, but can you tell me, if you know, what was the reason, as you understood it, why the SEC was asking you to give declarations? We will start with the first one, and then go to the second one.

A. The reason was just to provide information of my knowledge in regards to how tapes were -- how -- how the voice recorder worked at Refco.

Q. Now, you were employed at Refco for what period of time?

A. '99 through 2005, and then stayed with the estate through 2007.

Q. And why did you leave Refco?

A. I didn't -- you mean the estate or Refco?

Q. Well, explain that. When you say estate, what are you referring to?

A. Well, I -- Refco went under. I think at the time it was the twelfth largest bankruptcy. And I then stayed with Refco to wind the business down,

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and then left in 2007 to come back to Chicago.

Q. And that winding down period was between 2005 and 2007?

A. That is correct.

Q. Okay. Do you know why Refco went bankrupt?

A. The fraudulent accounting behavior of Mr. Phil Bennett, yes.

Q. Okay. Did you know anything about the fraudulent accounting behavior while you were at Refco?

A. Did I know what he was doing, is that the question?

Q. Did you know anything about it?

A. No, I did not.

Q. Were you ever contacted by any investigator?

A. Absolutely.

Q. Who were the investigators that contacted you?

A. Well, I was part of that initial audit in two thousand -- in October. So the first one to contact me was FTI, FTI Consulting.

Q. Okay. And did you understand FTI Consulting was working for a law firm that was doing

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some type of investigation?

A. I did not, no.

Q. Did you know what their role was?

A. At the time I was told that we were doing a standard audit, and to assist these guys as much as possible.

Q. And did you do that?

A. Absolutely.

Q. At any point did -- during the Refco investigation did you believe that you were under suspicion yourself for any reason at all?

A. No.

Q. Did you provide IT related information to the people doing the investigation?

A. Absolutely.

Q. Does that include the Department of Justice and the SEC or just the FTI Consulting group?

A. Initially it was FTI, unless FTI was requesting things for the DOJ, which I believe they were -- I'm sorry, that's speculation. But it was mainly providing information for FTI.

Q. Okay. Why do you believe that information provided to FTI might have been for the Department of Justice?

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A. I did see some documents that had been requested by the DOJ via FTI sometimes.

Q. Okay. And so you saw documents that suggested that to you?

A. Sure.

Q. Did anyone ever tell you that, though?

A. No.

Q. And did you have any direct contact with any DOJ investigators or FBI agents, anything like that?

A. I'm trying to think. No.

Q. Did the FTI consultants who were asking you for things, did they ask you for any tape recordings that were made internally at Refco?

A. You have to pardon me, because at the time when FTI came in, they requested a lot of just the pure data. Did they ask for the actual voice recordings? I cannot remember.

Q. Okay. So when you say you can't remember, it could have happened, but you can't remember, or you think it didn't happen?

A. It could have happened.

Q. Okay. Could it also be that any voice recordings that were being requested and provided

7 (Pages 22 to 25)

<p style="text-align: right;">Page 26</p> <p>1 J. LLANES</p> <p>2 were being done by someone else other than yourself;</p> <p>3 is that possible?</p> <p>4 A. Sure. Yes.</p> <p>5 Q. Okay.</p> <p>6 A. Yes.</p> <p>7 Q. Did you -- you mentioned Mr. Bennett at</p> <p>8 Refco.</p> <p>9 Who was that?</p> <p>10 A. At the time that was our president and CEO.</p> <p>11 Q. Did you report to him?</p> <p>12 A. No.</p> <p>13 Q. At any time did you report to him?</p> <p>14 A. Do you mean answer questions or do you</p> <p>15 mean --</p> <p>16 Q. Report to him like in terms of the position</p> <p>17 you had at Refco.</p> <p>18 A. No. No.</p> <p>19 Q. Who did you report to at Refco?</p> <p>20 A. I reported to Mike Mallahan.</p> <p>21 Q. Okay. How about Santo Maggio, did you</p> <p>22 report to him at any point?</p> <p>23 A. No.</p> <p>24 Q. Okay. Going back to the declarations, when</p> <p>25 were you -- you know what, we will just go ahead and</p>	<p style="text-align: right;">Page 27</p> <p>1 J. LLANES</p> <p>2 make this an exhibit.</p> <p>3 MR. COOPERSMITH: Make this Llanes</p> <p>4 Exhibit 2.</p> <p>5 (Llanes Exhibit 2 marked for</p> <p>6 identification.)</p> <p>7 Q. Mr. Llanes, do you recognize that as a</p> <p>8 declaration that you signed on December 28th,</p> <p>9 2007, in connection with this case?</p> <p>10 A. I do recognize this, yes.</p> <p>11 Q. Can you recall who asked you to put</p> <p>12 together this declaration?</p> <p>13 A. It was Mr. McHale.</p> <p>14 Q. Did McHale ever tell you the reason at the</p> <p>15 time why they needed this declaration from you?</p> <p>16 A. No.</p> <p>17 Q. And did you have a choice as to whether to</p> <p>18 do it or not or were you, in your view, required to</p> <p>19 make the declaration?</p> <p>20 A. I would say in my view, since I was the</p> <p>21 only IT guy left -- well, I'm sorry. Since myself</p> <p>22 and a couple other folks were the only ones left, I</p> <p>23 felt it my obligation to do it.</p> <p>24 Q. Okay. But did anyone tell you that you</p> <p>25 were required to do it?</p>
<p style="text-align: right;">Page 28</p> <p>1 J. LLANES</p> <p>2 A. No.</p> <p>3 Q. So your understanding was that you were</p> <p>4 required to do it?</p> <p>5 A. My understanding is, yes, I was.</p> <p>6 Q. Okay. Now, there are a number of</p> <p>7 attachments to the declaration.</p> <p>8 Can you tell us generally what those are?</p> <p>9 A. Voice recorder tapes from the NiceLog</p> <p>10 system.</p> <p>11 Q. Okay. Now, who actually drafted the text</p> <p>12 of the declaration?</p> <p>13 A. I want to say that that was the SEC that</p> <p>14 drafted that for me.</p> <p>15 Q. Would that be Mr. McHale?</p> <p>16 A. Mr. McHale, and then, of course, I had</p> <p>17 input.</p> <p>18 Q. Okay. So when you gave input, do you</p> <p>19 recall making any particular changes to what the SEC</p> <p>20 had drafted when you first saw it?</p> <p>21 A. The first draft, what do I recall? I</p> <p>22 recall the date of my start. I recall -- I want to</p> <p>23 say the date when I -- I think in statement 7, "In</p> <p>24 or about 2003," I believe it said 2001. But that's</p> <p>25 what I -- that's all I recall.</p>	<p style="text-align: right;">Page 29</p> <p>1 J. LLANES</p> <p>2 Q. Okay. So it sounds like you must have seen</p> <p>3 a draft of the declaration before it was finalized;</p> <p>4 is that a correct statement?</p> <p>5 A. Yes.</p> <p>6 Q. And how was that transmitted to you, that</p> <p>7 draft?</p> <p>8 A. I believe that was FedEx.</p> <p>9 Q. Okay. Do you still have a copy of the</p> <p>10 draft that you got by FedEx?</p> <p>11 A. I might.</p> <p>12 MR. COOPERSMITH: Okay. Counsel, we ask</p> <p>13 that you look for that in the course of looking</p> <p>14 for documents under the subpoena.</p> <p>15 Q. Did any other changes or areas where you</p> <p>16 gave input stand out in your mind, Mr. Llanes?</p> <p>17 A. Certainly there was a correction to the</p> <p>18 declaration after this, which is why No. 8 was</p> <p>19 changed.</p> <p>20 Q. And that was -- the correction was made in</p> <p>21 a second declaration?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. We will get to that. Thanks.</p> <p>24 Anything else?</p> <p>25 A. I cannot recall.</p>

1 J. LLANES

2 Q. Okay. Let's take a look at the actual text
3 of Exhibit 2. It starts out in paragraph 1 reading:
4 "From on or about January 1st, 1999, to on or
5 about June 30th, 2007, Refco Securities employed
6 me in its Information Technology Operations (IT)
7 department."

8 And is that a correct statement of the
9 period of time that you worked for Refco,
10 Mr. Llanes?

11 A. That is correct.

12 Q. And it was a two-year period towards the
13 end there, from '05 to '07, where you were actually
14 working for the estate rather than Refco itself; is
15 that right?

16 A. That is correct.

17 Q. And then it says that -- in paragraph 1:
18 "From on or about June 1st, 2003, to the on or
19 about June 30th, 2007, I served as the head of
20 that department."

21 Do you see that?

22 A. Yes.

23 Q. So is that a correct statement of the
24 period of time that you were head of the IT
25 department at Refco?

1 J. LLANES

2 Q. So there was a period of time where you
3 didn't live in Chicago, you lived in New York?

4 A. That is correct.

5 Q. Okay. And that coincided with your
6 promotion to being the head of the IT department at
7 Refco?

8 A. That is correct.

9 Q. Okay. And that was just -- give me the
10 dates again that you were living in New York working
11 for Refco?

12 A. That is correct.

13 Q. What are the dates?

14 A. June of 2003 through, I want to say, June
15 of 2006.

16 Q. Okay.

17 A. My apologies. The question, when you were
18 asking me those questions before, I was -- I was
19 just thinking still, I guess, in my 20s.

20 Q. Okay.

21 A. When you were going through my timeline of
22 my education.

23 Q. I'm just trying to understand what
24 happened.

25 So there was a period of time between June

1 J. LLANES

2 A. Right. It was the head of that department,
3 that particular department in New York, yes.

4 Q. I'm sorry?

5 A. Yes. The answer is yes, but the head of IT
6 in New York, yes.

7 Q. So you were head of IT in New York between
8 June 1st, 2003, to June 30, 2007?

9 A. That is correct.

10 Q. Were you living in New York?

11 A. I was living in New York, yes.

12 Q. Okay. Between what period --

13 A. I'm sorry, Hoboken, yes.

14 Q. Okay. New Jersey?

15 A. Yes.

16 Q. You were living in New York for what period
17 of time?

18 A. Between 2003 and -- when did we move --
19 2006.

20 Q. Okay. So when I asked you before about
21 living in Chicago the whole time --

22 A. Oh, I'm sorry.

23 Q. And I'm not trying to trick you. I just
24 want to make sure I understand.

25 A. Yes. Yes. I'm sorry.

1 J. LLANES

2 '03 and some period -- sometime in '06 that you were
3 living in New York?

4 A. Correct.

5 Q. And during that time you were also the head
6 of the IT department at Refco?

7 A. That is correct.

8 Q. Okay. But before June 2003 you were living
9 in Chicago?

10 A. That is correct.

11 Q. Is that right?

12 A. Yes. In Evanston, yes.

13 Q. What was your position at Refco before you
14 were promoted to IT director?

15 A. I was head of the networking team.

16 Q. What's the networking team?

17 A. It's the -- it's a subgroup of the
18 infrastructure team that was out here in Chicago.

19 Q. And what were your duties as the part of
20 the networking team?

21 A. Oversaw the network connectivity of the IT
22 operations and infrastructure in the Chicago office.

23 Q. Okay. And when you became director of IT,
24 am I correct that you would have been overall
25 responsible for all IT operations at Refco?

<p style="text-align: right;">Page 34</p> <p>1 J. LLANES</p> <p>2 A. All of IT operations in New York.</p> <p>3 Q. In New York?</p> <p>4 A. Yes, that is correct.</p> <p>5 Q. Was there a separate director of IT in</p> <p>6 Chicago while you were serving in New York?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Why did they make you director in</p> <p>9 New York rather than Chicago?</p> <p>10 A. There was an opening.</p> <p>11 Q. Okay. While you were at the networking</p> <p>12 team in Chicago prior to 2003, who was responsible</p> <p>13 for working on the NiceLog phone systems?</p> <p>14 A. Where? Which location?</p> <p>15 Q. In New York.</p> <p>16 A. In New York? I know it to be Gregg Blauth.</p> <p>17 Q. But that was not you; am I correct?</p> <p>18 A. It was not me.</p> <p>19 Q. Who was in charge of the NiceLog phone</p> <p>20 recording system in Chicago?</p> <p>21 A. John Beatty.</p> <p>22 Q. That's B-e-a-t-t-y?</p> <p>23 A. B-e-a-t-t-y.</p> <p>24 Q. Okay. Did you report to Mr. Beatty, or was</p> <p>25 he sort of a separate track from your job?</p>	<p style="text-align: right;">Page 35</p> <p>1 J. LLANES</p> <p>2 A. He was a separate track. I did not report</p> <p>3 to John Beatty.</p> <p>4 Q. Okay. Now, in paragraph 1 of the</p> <p>5 declaration, going back to Exhibit 2 here,</p> <p>6 Mr. Llanes, the last sentence says, "MF Global</p> <p>7 Securities in Chicago presently employs" -- and</p> <p>8 should that be a "me" there?</p> <p>9 A. There should be a "me" there.</p> <p>10 Q. So it should read: MF Global Securities in</p> <p>11 Chicago presently employs me in its IT department;</p> <p>12 is that right.</p> <p>13 A. At that time, yes.</p> <p>14 Q. So as of December 28th, '07, you were</p> <p>15 working for MF Global in Chicago; is that right?</p> <p>16 A. I was.</p> <p>17 Q. And are you still working for MF Global?</p> <p>18 A. I am not.</p> <p>19 Q. When did you leave employment at MF Global?</p> <p>20 A. November -- I want to say November 15,</p> <p>21 2010.</p> <p>22 Q. Why did you leave MF Global in</p> <p>23 November 2010?</p> <p>24 A. There was a restructure. They let me go.</p> <p>25 Q. Didn't they still need IT?</p>
<p style="text-align: right;">Page 36</p> <p>1 J. LLANES</p> <p>2 A. Oh absolutely.</p> <p>3 Q. So what happened?</p> <p>4 A. They wanted to shift everything out to --</p> <p>5 to London.</p> <p>6 Q. Are you aware of more recent events</p> <p>7 regarding MF Global?</p> <p>8 A. Oh yes.</p> <p>9 Q. Are you involved in any litigation, or</p> <p>10 anything like that, with regard to MF Global?</p> <p>11 A. I am not.</p> <p>12 Q. Did any investigators ever contact you</p> <p>13 about MF Global?</p> <p>14 A. No.</p> <p>15 Q. Do you expect that anyone will contact you?</p> <p>16 A. I do not expect that.</p> <p>17 Q. Has anyone ever asked you to preserve</p> <p>18 documents that you might have with regard to MF</p> <p>19 Global?</p> <p>20 A. No.</p> <p>21 Q. Now let's take a look at paragraph 3 of the</p> <p>22 same declaration, it's Exhibit 2. The first</p> <p>23 sentence reads: "Refco recorded the conversations</p> <p>24 of its registered representatives, including their</p> <p>25 telephone conversations with those with whom they</p>	<p style="text-align: right;">Page 37</p> <p>1 J. LLANES</p> <p>2 discussed securities transactions and other</p> <p>3 matters."</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. Then it goes on, "Refco made these</p> <p>7 recordings by using a 'NiceLog' voice logger</p> <p>8 system."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Then it reads: "That system recorded all</p> <p>12 conversations that took place on other near the</p> <p>13 telephones used on Refco's trading desk."</p> <p>14 Do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And then it reads: "Refco stored these</p> <p>17 recordings on Sony DD2 and Sony DD3 disks."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Now the attachments to the declaration, are</p> <p>21 those copies of these Sony DD2 and DD3 disks?</p> <p>22 A. They are.</p> <p>23 Q. What is that exactly, what sort of media?</p> <p>24 Is that a disk?</p> <p>25 A. No, they are tapes. They are magnetic --</p>

<p style="text-align: right;">Page 38</p> <p>1 J. LLANES</p> <p>2 magnetic recording tapes.</p> <p>3 Q. Okay. Are they disks or tapes?</p> <p>4 A. Tapes.</p> <p>5 Q. Okay. Any idea why it says they are disks?</p> <p>6 A. No.</p> <p>7 Q. What is a Sony DD2 and Sony DD3 disk?</p> <p>8 A. I don't know.</p> <p>9 Q. Is that like some sort of digital storage,</p> <p>10 in your view, as an IT person?</p> <p>11 A. It could be. It could be.</p> <p>12 Q. So if I understand this correctly, the</p> <p>13 attachments to the declaration are copies of the</p> <p>14 labels of magnetic tapes?</p> <p>15 A. Correct.</p> <p>16 Q. But they are not copies Sony DD2 and DD3</p> <p>17 disks; correct?</p> <p>18 A. They are not -- these -- these copies are</p> <p>19 of magnetic Sony tapes.</p> <p>20 Q. How do you know they are Sony?</p> <p>21 A. Because I can see they are Sony right here.</p> <p>22 Q. Because you can see the Sony, okay.</p> <p>23 But are they Sony DD2 and DD3 disks?</p> <p>24 A. They are not disks. They are tapes.</p> <p>25 Q. Okay. So if you go to paragraph 4 of the</p>	<p style="text-align: right;">Page 39</p> <p>1 J. LLANES</p> <p>2 declaration, when it says: "I have attached to this</p> <p>3 declaration the labels from the Sony DD2 and DD3</p> <p>4 disks" --</p> <p>5 A. Right.</p> <p>6 Q. -- "as Exhibits I through IV." And then it</p> <p>7 says: "Those labels are true and correct copies of</p> <p>8 the labels on the disks that store the</p> <p>9 above-referenced Refco recordings."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. So that's not accurately; is that right?</p> <p>13 A. Correct. They should say tapes.</p> <p>14 Q. Now going back to paragraph 3. Now, in</p> <p>15 2001, Mr. Llanes, did you have direct responsibility</p> <p>16 for operating or maintaining the NiceLog voice</p> <p>17 logger system?</p> <p>18 A. No. In 2001 you asked? No.</p> <p>19 Q. And do you understand that the NiceLog</p> <p>20 voice logger system has different settings that you</p> <p>21 could use depending on what you wanted to record,</p> <p>22 and so forth?</p> <p>23 A. In terms of?</p> <p>24 Q. Well, so I'm trying to understand this</p> <p>25 sentence that reads in paragraph 3 of Exhibit 2,</p>
<p style="text-align: right;">Page 40</p> <p>1 J. LLANES</p> <p>2 "That system recorded all conversations that took</p> <p>3 place on or near the telephones used on Refco's</p> <p>4 trading desk."</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Are you aware that it's possible to set the</p> <p>8 NiceLog system to record only selective</p> <p>9 conversations rather than all conversations?</p> <p>10 A. I am aware there were two types of phone</p> <p>11 lines that were recorded.</p> <p>12 Q. What were the two types of phone lines?</p> <p>13 A. So you had the regular phone lines where</p> <p>14 you just picked up a call, or picked up a line and</p> <p>15 started dialing, and the voice logger system would</p> <p>16 actually start -- start recording.</p> <p>17 And then we had things called ARDs, which</p> <p>18 is automatic ring downs. It's ring downs straight</p> <p>19 to the floors, where those are all -- you know, if</p> <p>20 the phone was just picked up, any time the phone was</p> <p>21 off the hook, the recording was taking place.</p> <p>22 Q. Okay. Do you know, by the way, whether</p> <p>23 people who were calling and, in fact, conversations</p> <p>24 being recorded were told that their conversations</p> <p>25 were being recorded?</p>	<p style="text-align: right;">Page 41</p> <p>1 J. LLANES</p> <p>2 A. I do not know this.</p> <p>3 Q. Have you ever looked at the manual for the</p> <p>4 NiceLog system?</p> <p>5 A. I have not.</p> <p>6 Q. Are you aware that the NiceLog system has a</p> <p>7 feature that allows for selective recording of</p> <p>8 conversations?</p> <p>9 A. I do not.</p> <p>10 MR. COOPERSMITH: I would like to mark as</p> <p>11 Exhibit 3 this NiceLog Administrator's Manual.</p> <p>12 (Llanes Exhibit 3 marked for</p> <p>13 identification.)</p> <p>14 MR. GUIDO: Can I put some objections on</p> <p>15 the record before you start?</p> <p>16 MR. COOPERSMITH: Do you have an objection</p> <p>17 to a particular question or --</p> <p>18 MR. GUIDO: Yeah, to the document.</p> <p>19 MR. COOPERSMITH: Okay.</p> <p>20 MR. GUIDO: I object to the foundation, and</p> <p>21 I also object to the relevance. The relevance</p> <p>22 is the manual is dated July 2004 and to this</p> <p>23 date the document has not been authenticated in</p> <p>24 this case.</p> <p>25 MR. COOPERSMITH: Okay. Duly noted.</p>

<p style="text-align: right;">Page 42</p> <p>1 J. LLANES</p> <p>2 BY MR. COOPERSMITH:</p> <p>3 Q. Mr. Llanes, did you ever see this document</p> <p>4 before, this manual?</p> <p>5 A. I had no reason to look through the</p> <p>6 document.</p> <p>7 Q. Okay. Are you aware of any versions of the</p> <p>8 NICE Administrator's Manual prior to July 2004?</p> <p>9 A. No.</p> <p>10 Q. Are you aware whether the NiceLog system</p> <p>11 had different features in 2001 compared to July of</p> <p>12 2004?</p> <p>13 A. No.</p> <p>14 Q. If you take a look at the -- if you take a</p> <p>15 look -- well, let me make this easy for you. If you</p> <p>16 look at the very lower left, do you see there is a</p> <p>17 number in the very bottom left? And I'll represent</p> <p>18 to you that for the deposition I've placed these</p> <p>19 numbers on exhibits so that we could reference</p> <p>20 things and be on the same page.</p> <p>21 A. Okay.</p> <p>22 Q. So I'm looking at page 8, looking at the</p> <p>23 lower left of the document.</p> <p>24 A. Okay.</p> <p>25 Q. Do you see it has a chapter --</p>	<p style="text-align: right;">Page 43</p> <p>1 J. LLANES</p> <p>2 A. Okay.</p> <p>3 Q. Page 8, are you there?</p> <p>4 A. Page 8 in the lower right.</p> <p>5 Q. Oh, okay. Page 8 on the lower right on</p> <p>6 this particular exhibit. My apologies.</p> <p>7 A. Okay.</p> <p>8 Q. Do you see there is a chapter called</p> <p>9 Chapter 5?</p> <p>10 A. Yes.</p> <p>11 Q. And it is called Setting Up Selective</p> <p>12 Recording.</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. And if you look at page 143 of the same</p> <p>16 document, Exhibit 3.</p> <p>17 A. Okay.</p> <p>18 Q. Can you see that that's the chapter that's</p> <p>19 headed Setting Up Selective Recording?</p> <p>20 A. Yes.</p> <p>21 Q. And then if you go to page 155 of the same</p> <p>22 document.</p> <p>23 A. Okay.</p> <p>24 Q. Do you see that that has a heading called</p> <p>25 Recording Programs that Prevent Recording?</p>
<p style="text-align: right;">Page 44</p> <p>1 J. LLANES</p> <p>2 A. Okay.</p> <p>3 Q. And then it says under that, "You can</p> <p>4 define a recording program that will not record</p> <p>5 selected calls. This is Negative Recording</p> <p>6 Program."</p> <p>7 Do you see that?</p> <p>8 A. Yes.</p> <p>9 Q. Are you familiar with that feature of the</p> <p>10 NiceLog system?</p> <p>11 A. I am not familiar.</p> <p>12 Q. As you sit here today, can you tell me</p> <p>13 whether or not the recording system in New York in</p> <p>14 2001 was making use of any of these features?</p> <p>15 A. I cannot.</p> <p>16 Q. Can you tell me anything about the settings</p> <p>17 of the NiceLog system in New York in 2001?</p> <p>18 A. I cannot.</p> <p>19 Q. Did you have any responsibility for how</p> <p>20 those settings were adjusted in 2001?</p> <p>21 A. I did not.</p> <p>22 Q. Can you tell me whether in 2001, in fact,</p> <p>23 they were recording every phone conversation from</p> <p>24 the trading desk at Refco?</p> <p>25 A. I cannot.</p>	<p style="text-align: right;">Page 45</p> <p>1 J. LLANES</p> <p>2 Q. Let's go to paragraph 5 of the declaration.</p> <p>3 I'm sorry, I'm skipping to -- I didn't mean</p> <p>4 paragraph 5.</p> <p>5 Let's take a look at paragraph 7. That</p> <p>6 reads: "In or about July 2003 I was the custodian</p> <p>7 of the above-referenced recordings."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. So prior to that you were not the</p> <p>11 custodian; is that a fair statement?</p> <p>12 A. That is correct.</p> <p>13 Q. Now, the next paragraph 8, it reads: "At</p> <p>14 that time, following the instructions from Refco's</p> <p>15 outside counsel, Mayer Brown Rowe & Maw, I directed</p> <p>16 Refco personnel to assemble all of their original</p> <p>17 tape recordings described above in Exhibits I</p> <p>18 through IV and to pack them for shipment."</p> <p>19 Do you see that?</p> <p>20 A. I did. I do.</p> <p>21 Q. Who were the Refco personnel that you are</p> <p>22 referring to in that particular sentence?</p> <p>23 A. So we are going to go -- we are going to</p> <p>24 touch base on that -- there was a correction to that</p> <p>25 statement.</p>

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Q. I promise.

A. All right. So just to make sure.

I have to recall. Sorry. So in 2003, when I came in, they were in the middle of a huge litigation request, the IT team was. So as I took over, there were three -- there were three consultants that we had hired, short-term consultants, to just continually to pull tapes, or pull -- I'm sorry -- get the tape recordings, and then copy them to disks.

Who were those three individuals? Because they were temp employees, I cannot tell you their names. Do I have that information with me? I do not.

Q. Okay. So prior to July 2003 there were people involved with this law firm, Mayer Brown, working on these recordings, but you weren't involved with that; is that right?

A. I got involved when I took over.

Q. In July 2003?

A. Correct.

Q. But prior to that there were other people dealing with that?

A. Correct.

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Q. Now, I understand you say there is a later declaration that corrects that; right?

A. Yes.

Q. And the correction -- why don't you describe to me what the correction is?

A. The correction is that, from what I recall, is that there were a set of tapes -- so hang on.

So we did burn disks for Mayer Brown. We shipped those over. And then what was requested were the specific tapes that we used to burn -- that we used to pull this information, the voice recorders -- the voice recordings of the requested custodians.

Does that make sense? Do you understand -- do you follow me?

Q. Let me read the answer here, and I'll tell you in a minute.

Okay. Mr. Llanes, my understanding is that -- let's just get the other declaration out. That might be easier.

MR. COOPERSMITH: Let's mark this as Exhibit 4.

(Llanes Exhibit 4 marked for identification.)

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J. LLANES

Q. And as you sit here today, you can't remember who those people were?

A. I apologize.

Q. Were you working with them at the time?

A. Then I did work with them. Right. I did direct them and say, okay, all these tapes -- I'm sorry -- all these voice recordings you guys are taking, you have to bring them onto disks, right. We were coordinating that.

Q. And your work with that started in approximately July 2003?

A. Correct.

Q. Do you know what particular day, date, exactly, or can you be more specific than July 2003?

A. Probably the beginning; so maybe July 1st, but...

Q. And then the next sentence here reads: "At my further direction, these Refco personnel delivered these tape recordings to Mayer Brown Rowe & Maw's New York office for production to the Securities and Exchange Commission pursuant to its request."

Do you see that?

A. Yes.

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Q. Okay. Now, Exhibit 4 is a collection of documents that starts with a Second Declaration of Kenneth Guido on the first page.

Do you see that?

A. Yes.

Q. If you look at the last three pages, and this one actually really does have numbers on the very lower left-hand corner.

Do you see that?

A. Yes.

Q. So I'm actually looking at page 29, using the lower left-hand number of Exhibit 4.

A. Okay.

Q. Is that your supplemental declaration --

A. That is.

Q. -- that you gave in this case?

A. Yes.

Q. Am I correct that the correction to the initial declaration is in paragraph 8, which appears on page 31 of this Exhibit 4?

A. Yes.

Q. And that reads: "Paragraph 8 of my December 2007 declaration stated that in July 2003 I directed Refco employees in New York to assemble and

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deliver all of the original tape recordings listed in the exhibits to my declaration for production via Refco's counsel to the Securities and Exchange Commission. That paragraph should have stated that I directed Refco personnel to assemble and deliver all original tape recordings sought by the SEC that had not already been produced. I now believe that certain such recordings may have been produced earlier."

Do you see that?

A. Yes.

Q. Is that an accurate statement as to what the actual facts were?

A. Yes.

Q. Okay. Going back to the initial declaration, can you explain why there was that error in the first declaration?

A. Misunderstanding.

Q. Between who?

A. Just me. I'm not accustomed to looking at these type of documents.

Q. So is it a fair statement that the SEC attorney who drafted the initial declaration, based on conversations with you, just got it a little bit

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wrong in terms of what occurred?

A. Yeah, I should have looked at it better.

Q. So that was an area where you should have given input, but back in 2007 you just didn't do that; is that fair?

A. That's fair.

Q. In the supplemental declaration, which is Exhibit 4, when you say, "I now believe that certain such recordings may have been produced earlier," can you tell me which ones were produced earlier and which ones were produced by you?

A. Right. So I don't know which ones were produced earlier. All I know is that we did produce a set of tapes earlier.

Q. When you say "we", you mean people at Refco?

A. Correct.

Q. Okay.

A. Myself and my team.

Q. Okay.

A. The remainder of the tapes that I mentioned in this -- in Exhibit 4, right, is this Exhibit 4, in the remainder of the tapes that I speak of that was sent, that was during the time of the estate,

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when we were winding down the estate, when I was told to take the rest of the tapes and ship them off.

Q. So the wind down of the estate, I believe, you said was between 2005 and 2007?

A. Correct.

Q. And this paragraph of Exhibit 4, your supplemental declaration, paragraph 8, talks about events in 2003.

A. Right. See.

Q. So I'm a little confused why you say this had to do with during the time of the wind down of the estate.

A. Right. I knew you were going to get that. So, again, that's just me not understanding.

Q. What's not you understanding?

A. It's me not understanding what this part said.

Q. When you are referring to "this part" -- I'm sorry, we have a record.

A. I'm sorry. I'm sorry. Yes. On Exhibit 2, statement 8, right.

Q. Okay.

A. When that first declaration came out,

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right, I'll be honest with you, I was under the impression that -- not knowing what all these cases are all about, and there are so many cases that are flying around, what have you, so my understanding is, to me, tapes are tapes, right. People were asking for tapes. People were asking for information. I'm just going to give it to whomever it is. Whether it's for this case or for that case, I couldn't even tell you who it was for.

So all -- in the understanding when this came out, right, when this particular declaration came out, and far be it from me to actually see that it was for Andreas Badian versus the SEC, what have you, all I know is tapes, right, they asked me about these tapes, here is what the tapes did for me, and now I'm providing you that, yes, these tapes were given to Mayer Brown, boom, done.

And then I had a second look at it saying, whoa, hang on a second, this is incorrect. Then in Exhibit 4 here, page 31, that that's why there was the correction.

So, again, under the understanding that I don't know anything in specific of which case is what, all I'm saying is I provided tapes to Mayer

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Brown, you know, or the SEC for that matter. That these are the tapes that were given, and all I know is as a whole that I provided -- we provided the tapes -- the remainder of the tapes, right.

Q. Okay.

A. Does that make sense? I don't know what's going on, and what case is what.

Q. I think I understand what you are saying.

The question I have for you, though, for the moment is: How did the mistake in the declaration between the first declaration and the second declaration come to your attention?

A. Just reading it again.

Q. So how did you happen to be reading the declaration again?

A. I was winding down. When did this come out? This was the whole -- I believe McHale probably asked me to take a second look at it, and said read it again, just to make sure that I was okay with everything.

Q. Okay. So at Mr. McHale's direction you reviewed the initial declaration that you gave in this case?

A. Yes.

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to Mayer Brown and which ones you provided?

A. So I can tell you that within these tapes that you have given -- within Exhibit 2, right, that you have given here, and the internal exhibits on Exhibit 2, I cannot tell you which ones specifically we gave to Mayer Brown during the 2003 litigation request.

Q. Okay. Am I correct that once you gave anything to Mayer Brown, that was the end of it in terms of your knowledge of what happened; is that right?

A. Yes, that's correct.

Q. So you had no further involvement with the tapes or any aspect of the tapes once you gave them to Mayer Brown?

A. That is correct.

Q. Okay. As to what they produced to the SEC, or what they did with them, you just couldn't say; is that right?

A. I cannot say.

Q. Okay. With regard to Mayer Brown, I want to show you an exhibit I'm going to mark as No. 5.

(Llanes Exhibit 5 marked for identification.)

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Q. And in the course of reviewing that, you noticed that there was an error?

A. Correct.

Q. And that was in paragraph 8 of both the initial and the corrected in paragraph 8 --

A. Correct. And, actually, there was one more -- the date when I started in 2000, or something like that. What is it, January 2000. What was it in the earlier one? It says January 1, 1999. Here in Exhibit 4 is December -- I'm sorry -- January 2000.

Q. So actually you started at Refco in January 2000 rather than January 1999?

A. Right. It was almost '99, because I -- I technically started in December of '99, but that was just the actual -- my start date.

Q. So that was another error that you corrected in the second declaration?

A. Right.

Q. Okay.

A. I'm sorry. I physically started in '99, but I technically started in 2000.

Q. Okay. But as you sit here, again, can you tell us which recordings had already been provided

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MR. GUIDO: I'd like to put on an objection, foundation objection and a relevance objection. Go ahead.

BY MR. COOPERSMITH:

Q. First of all, Mr. Llanes, have you ever seen Exhibit 5, this letter from John Hewitt to Christopher Ehrman?

A. I have not.

Q. And do you see it's dated May 30th, 2003?

A. I do.

Q. Do you know John Hewitt?

A. I do not.

Q. Who were the people at Mayer Brown that you were working with?

A. Lisa Dunskey. She had a counterpart in New York that I cannot recall. No, I don't know.

Q. Now, am I correct, Mr. Llanes, that the date of the letter being May 20th -- I'm sorry -- May 30th, 2003, that your involvement in providing recordings to Mayer Brown all occurred after the date of this letter?

A. That is correct.

Q. If you take a look -- and, again, I have some page numbers on the very lower left, bottom

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left.

A. Yes.

Q. So I want to start with paragraph -- I'm sorry -- page 5. And there is a paragraph near the top that starts with the words "counsel after appropriate inquiry".

Do you see that?

A. Yes.

Q. And the very last sentence of that paragraph, or last two sentences, read as follows: "By agreement with the Staff in late January 2003, Refco reviewed all relevant telephone tapes and extracted from them the conversations on Graham's telephone lines. These were then placed on CDs which were provided to the Staff."

Do you see that?

A. Yes.

Q. Am I correct that you had nothing to do with that process of extracting conversations from Graham's telephone lines?

A. If it was prior to 2000 -- I'm sorry. If it was prior to June -- late June 2003, I was not part of this.

Q. Can you tell me what the methodology was

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for extracting conversations from Graham's telephone lines was?

A. From Graham's telephone line or from telephone lines in general?

Q. Can you tell me anything about what Mr. Hewitt is referring to, what the process was, what the methodology was for extracting conversations from Graham's telephone lines, as referenced in this letter?

A. I cannot.

Q. Can you tell me anything about whether complete conversations from Graham's telephone lines were placed on CDs and provided to the SEC staff?

A. I can tell you there were some conversations burned under my direction, again, after 2003 of June.

Q. Okay. Looking at the next paragraph of the letter, which is Exhibit 5, do you see there is an indented paragraph that starts with the words "all recording sessions are an average of"?

A. Correct. Yes.

Q. And, then, in the middle there is a sentence that reads: "After the voice recordings have been restored, we used the query process on the

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software to retrieve the recordings."

Do you see that?

A. Yes.

Q. Can you tell me anything about how this query process was utilized to retrieve recordings?

A. You want me to speak prior, again, to June 2003?

Q. Let me try to be more specific.

This letter says that the IT department provided the following explanation on February 6th.

Do you see that?

A. Yes.

Q. And that the explanation provided by Refco's IT department was, in this sentence, "After the voice recordings have been restored, we used the query process on the software to retrieve the recordings."

Do you see that?

A. Yes.

Q. So I'm asking you in this matter do you have any knowledge of how the IT department went about retrieving recordings using a query process?

A. I know, again, after June of 2003 -- I'm

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trying to recall how the query process worked. Can I just walk through?

Q. Go ahead.

A. Okay. So they would locate the location of the phone in question; get the tape; put the tape into the machine; use the NiceLog system to locate the time and date of request -- requested, and, of course, the location; take all that information, restore it; so you have to restore it onto the Nice logger system, which is a spinning disk. It only held so much, that's why it took a long time.

And, then, the guys would take that information, burn it into a WAV file, right. NiceLogger had a way to take the information and put it into a WAV file. And then -- and then the guys would -- the guys, meaning the consultants, they would then take that information and burn it onto a disk.

Q. Okay.

A. Now, the query system you are asking about, I cannot speak to it. All I know is we were able to identify a location and phone and, of course, the particular phone line being used, because they had multiple -- traders had multiple phone lines.

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So in terms of query system, quote unquote, query system, that was just here is where person X was sitting. They had phone lines one, two, three. And then you just had to cross reference where they were sitting in the NiceLog system.

Q. When this particular work that's referenced in Exhibit 5 was done by the IT department, as described in Mr. Hewitt's letter, you had no involvement in that?

A. I had no involvement in that.

MR. GUIDO: Can we take a break at this point?

MR. COOPERSMITH: Are you ready for a break?

THE WITNESS: Yeah, it doesn't matter.

MR. COOPERSMITH: Yeah, we can take a break.

(Recess taken from 1:56 P.M. to 2:02 P.M.)

BY MR. COOPERSMITH:

Q. Mr. Llanes, first of all, during the break did you have any conversations with Mr. Guido?

A. No.

Q. I want to continue asking some questions

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that had already been copied would be sent immediately to the Staff."

Do you see that?

A. Yes.

Q. And then the last sentence in that paragraph reads: "Pursuant to this agreement, 29 of the 70 requested tapes were sent to the Staff on April 29th, 2003, and this production is continuing."

Do you see that?

A. Yes.

Q. So, again, am I correct that all of that activity described in that paragraph was occurring before you got involved with this project?

MR. GUIDO: Objection. There is no evidence in the record or in this deposition that any of this occurred.

A. If this occurred, I didn't do anything.

Q. You had no involvement?

A. I had no involvement.

Q. If it occurred?

A. Correct.

Q. By the way, do you have any idea why, if you look at the previous page, on page 5,

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about Exhibit 5, which is this letter from Mr. Hewitt to Mr. Ehrman dated May 30, 2003.

A. Okay.

Q. Do you have that in front of you?

A. Yes.

Q. Can you take a look at page 6, going, again, by those lower left-hand, bottom left-hand corner page numbers.

A. Okay.

Q. Are you there?

A. Yes.

Q. Okay. Do you see the second-to-last paragraph that starts with the word "unfortunately"?

A. Yes.

Q. Looking at the second sentence of that paragraph, it reads: "Counsel then sought and secured an agreement with the Staff under which Refco would extract relevant segments from the tapes which had not yet been reviewed pursuant to the original agreement and on a rolling basis provide the original tapes to the Staff."

Do you see that?

A. Yes.

Q. And then it says: "Those original tapes

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second-to-last paragraph, it reads: "Refco, by April 25th, 2003, had produced the relevant conversations on 29 of the 70 tapes containing these conversations," but on page 6 it references April 29th, 2003, rather than April 25th, 2003?

Do you have any idea why that is?

A. No.

Q. Do you have knowledge of what this letter is referring to when it talks about on page 6 an extraction of relevant segments from the tapes?

A. No.

Q. Let's go back to your supplemental declaration, which I believe was Exhibit 4. Just to be clear --

MR. GUIDO: Is that page 29 of 31?

Q. Exhibit 4 is actually a collection of documents under a declaration of Mr. Guido. And we are looking in particular at numbered pages 29 through 31, lower left-hand bottom.

A. Okay.

Q. Are you there?

A. Yes.

Q. I want to just start by asking you about paragraph 7, which is on page 31, using that same

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<p style="text-align: right;">Page 66</p> <p>1 J. LLANES</p> <p>2 numbering system.</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. It says: "After assuming leadership</p> <p>6 of the Information Technology department in New York</p> <p>7 in June 2003, I learned that tapes made in the New</p> <p>8 York office were stored at 200 Liberty Street in New</p> <p>9 York City."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. "In or around July 2003 I observed a large</p> <p>13 collection of these tapes stored in a locked file</p> <p>14 cabinet inside a locked equipment cage at that</p> <p>15 location."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Now, by the time you made that observation</p> <p>19 that you are putting forth in your declaration,</p> <p>20 Mr. Llanes, isn't it a fact that those tapes had</p> <p>21 already been accessed and were being worked with by</p> <p>22 the Mayer Brown firm?</p> <p>23 A. At that time I observed it?</p> <p>24 Q. Right.</p> <p>25 MR. GUIDO: If you know.</p>	<p style="text-align: right;">Page 67</p> <p>1 J. LLANES</p> <p>2 A. I mean, I can't tell you if those were the</p> <p>3 tapes. I mean, I do know that those were NiceLogger</p> <p>4 tapes.</p> <p>5 Q. But you don't know exactly what they were?</p> <p>6 A. I know that they were NiceLogger tapes. I</p> <p>7 didn't know if those were tapes that they were</p> <p>8 working -- I mean, I do know that we were -- I do</p> <p>9 know that we were pulling tapes. I just observed</p> <p>10 that there were a lot of back-up tapes.</p> <p>11 Q. I see. When I read paragraph 7,</p> <p>12 Mr. Llanes --</p> <p>13 A. Yes.</p> <p>14 Q. -- just coming to this fresh, it looks to</p> <p>15 me like you are trying to say that you observed</p> <p>16 tapes relevant to this case that were under lock and</p> <p>17 key in this locked equipment cage at Refco.</p> <p>18 Is that what you are trying to say?</p> <p>19 MR. GUIDO: Are you testifying, counsel?</p> <p>20 Q. Is that what you are trying to say?</p> <p>21 MR. GUIDO: Leading.</p> <p>22 A. No. No.</p> <p>23 Q. So --</p> <p>24 A. I'm saying -- how can I say this again?</p> <p>25 I'm saying, once again, right, that when this</p>
<p style="text-align: right;">Page 68</p> <p>1 J. LLANES</p> <p>2 declaration was produced, I don't know who it's</p> <p>3 going towards or what specific case it's going</p> <p>4 towards. All I know is the SEC was asking me about</p> <p>5 the tapes in general. And all I could say to it is,</p> <p>6 yes, in 2003 I did notice that there were a bunch of</p> <p>7 tapes back there.</p> <p>8 Q. Okay.</p> <p>9 A. Now --</p> <p>10 Q. Go ahead. I'm sorry, I didn't mean to</p> <p>11 interrupt you.</p> <p>12 A. Now, whether or not those were the actual</p> <p>13 tapes that were specific to this case, I can't tell</p> <p>14 you that, just because I don't know. I just know</p> <p>15 that there were tapes back there.</p> <p>16 Q. Okay.</p> <p>17 A. So as a whole, looking at everything as a</p> <p>18 whole, I guess, is where I'm saying.</p> <p>19 Q. I see. So when the sentence reads: "On or</p> <p>20 around July 2003," and I'm reading from paragraph 7</p> <p>21 of the supplemental declaration, when it says: "In</p> <p>22 or around July 2003 I observed a large collection of</p> <p>23 these tapes stored in a locked file cabinet inside a</p> <p>24 locked equipment cage at that location," when you</p> <p>25 say that in the declaration, you are just saying you</p>	<p style="text-align: right;">Page 69</p> <p>1 J. LLANES</p> <p>2 saw tapes in there, you don't know whether those are</p> <p>3 the tapes relevant to this SEC versus Andreas Badian</p> <p>4 matter or not?</p> <p>5 A. Right. All I'm just saying is there were a</p> <p>6 collection of tapes that I know the whereabouts of,</p> <p>7 and they were in a locked drawer in a locked cage,</p> <p>8 yes.</p> <p>9 Q. Do you have any understanding as to why</p> <p>10 that's in the declaration, if it doesn't necessarily</p> <p>11 have anything to do with this case?</p> <p>12 MR. GUIDO: Objection.</p> <p>13 A. No, I think they just -- again, from my</p> <p>14 perspective it was do you know where the tapes were,</p> <p>15 and my answer was yes. Okay. Then where were the</p> <p>16 taped located? They were in this location.</p> <p>17 Q. What tapes?</p> <p>18 A. The back-up NiceLogger tapes.</p> <p>19 Q. But were you aware when you put that down</p> <p>20 that there had already been work being done on</p> <p>21 NiceLogger tapes or recordings from -- relevant to</p> <p>22 this particular lawsuit, that that had already been</p> <p>23 done prior to your observation of these tapes in the</p> <p>24 equipment cage?</p> <p>25 A. I'm sorry. Yes, I do know what you are</p>

<p style="text-align: right;">Page 70</p> <p>1 J. LLANES</p> <p>2 saying here.</p> <p>3 Do I know that those -- I know that those</p> <p>4 are NiceLogger tapes, of the tapes that we used to</p> <p>5 record voice recordings, as a whole, from -- from</p> <p>6 the New York office at that particular location at</p> <p>7 200 Liberty.</p> <p>8 Do I know that those were the actual tapes</p> <p>9 that were being worked on for this specific case?</p> <p>10 The answer is no. I do know that we were pulling</p> <p>11 tapes. Whether or not it was from that particular</p> <p>12 location -- I do know that we were pulling tapes,</p> <p>13 and then when I had requested folks for the actual</p> <p>14 tapes to be given, then, to Mayer Brown, that they</p> <p>15 were pulling tapes.</p> <p>16 Now, I can't tell you that those -- that's</p> <p>17 where the tapes were, because I wasn't the -- I</p> <p>18 wasn't the keeper of those tapes, right. All I</p> <p>19 could say to folks and the team was, all right, we</p> <p>20 extracted the tapes, right, the tapes that you are</p> <p>21 working on -- I'm sorry. We extracted the voice</p> <p>22 recordings. You guys burned them on disks. We</p> <p>23 provided them to Mayer Brown. They are asking us</p> <p>24 for the tapes. I need the tapes.</p> <p>25 Whether or not those were the tapes they</p>	<p style="text-align: right;">Page 71</p> <p>1 J. LLANES</p> <p>2 were pulling from that actual location, I'll</p> <p>3 speculate that it will -- that they were, but I</p> <p>4 can't tell you for sure. But I can tell you they</p> <p>5 did produce the tapes, the physical tapes, and those</p> <p>6 were, you know, again, tapes that we gave -- gave up</p> <p>7 to Mayer Brown.</p> <p>8 Q. Okay. So from your perspective,</p> <p>9 Mr. Llanes, this statement that I'm reading in</p> <p>10 paragraph 7 about observing a collection of tapes</p> <p>11 inside a locked equipment cage --</p> <p>12 A. Yes.</p> <p>13 Q. -- are you trying to give the impression</p> <p>14 that the tapes relevant to this case were secured in</p> <p>15 a locked equipment cage as of the time you came upon</p> <p>16 them in July 2003?</p> <p>17 A. Correct.</p> <p>18 Q. You were trying to give that impression?</p> <p>19 A. I was just saying -- I need to take a step</p> <p>20 back. It was just a statement. Whether or not it's</p> <p>21 taking that I'm -- it's just a statement, right.</p> <p>22 I believe -- if I remember correct, right,</p> <p>23 the question is -- the question stemmed from where</p> <p>24 did these tapes come from. And my answer was, I</p> <p>25 knew that there were tapes that we had held, and</p>
<p style="text-align: right;">Page 72</p> <p>1 J. LLANES</p> <p>2 those tapes were in a cabinet that were locked,</p> <p>3 within a cabinet that were -- and the question was,</p> <p>4 well, how did you know that? And the answer was</p> <p>5 because I saw it.</p> <p>6 Q. But did you ever tell the SEC that the</p> <p>7 tapes you observed in the locked equipment cage were</p> <p>8 the tapes that they were requesting relevant to the</p> <p>9 SEC versus Andreas Badian matter?</p> <p>10 A. I would not have said it was specifically</p> <p>11 to that.</p> <p>12 Q. So all you told the SEC was that you saw</p> <p>13 tapes in a locked equipment cage?</p> <p>14 A. Yes.</p> <p>15 Q. You were not able to say which tapes they</p> <p>16 were; is that correct?</p> <p>17 A. Correct.</p> <p>18 Q. And if it were true that Mayer Brown, the</p> <p>19 law firm, had already been working with tapes prior</p> <p>20 to your beginning of work on this project in</p> <p>21 July 2003, then, by definition, those wouldn't be</p> <p>22 the same tapes in the locked equipment cage?</p> <p>23 A. Correct, if they had those tapes already,</p> <p>24 if they were not in that locked cabinet, I --</p> <p>25 Q. And the sentence that we are discussing in</p>	<p style="text-align: right;">Page 73</p> <p>1 J. LLANES</p> <p>2 paragraph 7, that was a sentence drafted by the SEC</p> <p>3 lawyer; is that correct?</p> <p>4 A. Correct.</p> <p>5 Q. Now looking at it today, as we sit here,</p> <p>6 would it be correct to add to that sentence that the</p> <p>7 large collection of tapes that you observed in a</p> <p>8 locked cabinet may or may not have anything to do</p> <p>9 with the SEC versus Badian matter?</p> <p>10 A. Sure.</p> <p>11 Q. Would that be accurate?</p> <p>12 A. It would be accurate.</p> <p>13 Q. Still on the supplemental declaration,</p> <p>14 which is Exhibit 5, and I want you to take a look at</p> <p>15 paragraph 2.</p> <p>16 MR. CONTI: Exhibit 4 you mean?</p> <p>17 MR. COOPERSMITH: Yes, Exhibit 4. What did</p> <p>18 I say? Exhibit 4.</p> <p>19 Q. Paragraph 2 of Exhibit 4. "This</p> <p>20 supplemental declaration provides additional</p> <p>21 information regarding Refco's taping of telephone</p> <p>22 conversations prior to June 2003."</p> <p>23 Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Why was, if you know, why was that</p>

<p style="text-align: right;">Page 74</p> <p>1 J. LLANES</p> <p>2 terminology "prior to June 2003" utilized in this</p> <p>3 declaration? Why pick that date?</p> <p>4 A. I do not know.</p> <p>5 Q. Well, that's when you started as IT</p> <p>6 director, approximately; right?</p> <p>7 A. Correct.</p> <p>8 Q. Now, do you understand, Mr. Llanes, that</p> <p>9 the recordings that are at issue in this particular</p> <p>10 lawsuit are in 2001?</p> <p>11 A. I do now.</p> <p>12 Q. So do you have any idea why the declaration</p> <p>13 doesn't just say as to what your knowledge is in</p> <p>14 2001?</p> <p>15 A. Because I have no knowledge.</p> <p>16 Q. Whose choice of words was that, "prior to</p> <p>17 June 2003"?</p> <p>18 A. That's probably me again not -- not editing</p> <p>19 it properly.</p> <p>20 Q. Okay. So to your -- as you can recall, did</p> <p>21 the phrasing "prior to June 2003" come from the SEC</p> <p>22 or did you come up with that phrasing?</p> <p>23 A. I did not prepare this document.</p> <p>24 Q. So it was coming from the SEC?</p> <p>25 A. Correct.</p>	<p style="text-align: right;">Page 75</p> <p>1 J. LLANES</p> <p>2 Q. Now, in the next paragraph, which is</p> <p>3 paragraph 3, we see that same phrase again, "prior</p> <p>4 to June 2003".</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Then it says: "I was familiar with Refco's</p> <p>8 practice of taping the telephone calls made to or</p> <p>9 from Refco's trading desks."</p> <p>10 Do you see that?</p> <p>11 A. What number are you on again?</p> <p>12 Q. In paragraph 3.</p> <p>13 A. Yes.</p> <p>14 Q. Now, it says "prior to June 2003". Can you</p> <p>15 tell me at what point precisely prior to June 2003</p> <p>16 you were "familiar with Refco's practice of taping</p> <p>17 telephone calls"?</p> <p>18 A. Prior to 2003 I was not.</p> <p>19 Q. So was this first sentence of paragraph 3</p> <p>20 of Exhibit 4 inaccurate?</p> <p>21 A. That is correct.</p> <p>22 Q. The next sentence reads: "I knew that this</p> <p>23 taping occurred at most or all of Refco's offices,</p> <p>24 including its Chicago and New York offices, and that</p> <p>25 this practice had been in effect for several years."</p>
<p style="text-align: right;">Page 76</p> <p>1 J. LLANES</p> <p>2 Do you see that?</p> <p>3 A. You are on 4?</p> <p>4 Q. Yes. Sorry, paragraph 3 of Exhibit 4.</p> <p>5 A. (Reading sotto voce.) Yes. Yes.</p> <p>6 Q. So why did you -- what's your understanding</p> <p>7 of the words "most or all" as used in that sentence?</p> <p>8 A. Now are we talking on the corrected -- past</p> <p>9 2003? You know what, forget that.</p> <p>10 I do know "most or all" means that the</p> <p>11 trading desks were typically recorded, if not all of</p> <p>12 them were recorded, right. We had to do that for</p> <p>13 the reason of if there were disputes on trades, or</p> <p>14 whatnot, and folks, you know, traders had to clarify</p> <p>15 some things with their customers, or whatnot.</p> <p>16 I say most or all because not all of them</p> <p>17 were recorded -- not all phone lines were recorded,</p> <p>18 because from an IT perspective, they were not</p> <p>19 recorded, the accounting folks were not recorded. I</p> <p>20 don't recall the executives being recorded. That's</p> <p>21 what I mean.</p> <p>22 Q. And is it also true that not all of Refco's</p> <p>23 offices even did the recording, as far as you know?</p> <p>24 A. There are certainly some satellite remote</p> <p>25 offices that had one or two folks there. Were they</p>	<p style="text-align: right;">Page 77</p> <p>1 J. LLANES</p> <p>2 recorded? I can't tell you.</p> <p>3 Q. So you don't know one way or the other</p> <p>4 whether all Refco offices were recorded; right?</p> <p>5 A. That's correct.</p> <p>6 Q. And in 2001 you had no specific knowledge</p> <p>7 of whether the New York office recorded all</p> <p>8 telephone conversations from traders' desks; is that</p> <p>9 right?</p> <p>10 A. I cannot say.</p> <p>11 Q. On paragraph 5 of the same Exhibit 4, do</p> <p>12 you see it says: "On two occasions prior to</p> <p>13 June 2003 I was assigned to obtain and listen to</p> <p>14 recordings made on the NiceLog logger in Refco's New</p> <p>15 York office."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Can you tell me exactly when that was prior</p> <p>19 to June 2003?</p> <p>20 A. Yes, and that's wrong again. I should not</p> <p>21 have said prior. It should have been after.</p> <p>22 Q. So prior to June 2003 you never were</p> <p>23 assigned to obtain and listen to any recordings made</p> <p>24 on the NiceLog logger in Refco's New York office; is</p> <p>25 that correct?</p>

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A. That is correct.

MR. COOPERSMITH: Can we go off the record for five minutes.

(Recess taken from 2:22 P.M. to 2:25 P.M.)

MR. COOPERSMITH: I have no further questions.

EXAMINATION

BY MR. GUIDO:

Q. Mr. Llanes, I'm Ken Guido. I think we spoke, was it last week?

A. Yes.

Q. And I have some clarifying questions. I would like to start with your last answer was with regard to Exhibit No. 4, page 25 -- page 30, paragraph 5.

You were asked a question whether or not on two occasions prior to June 2003 you were assigned to obtain and listen to recordings made on the NiceLog logger in Refco's New York office.

Do you see that?

A. Yes.

Q. Okay. And you are saying that that should have read on at least two occasions after June 2003?

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J. LLANES

A. Yes.

Q. How many occasions after June 2003 did you attempt to listen to recordings made on the NiceLog logger in Refco's New York office?

A. With respect to this case or as a whole?

Q. Just in the whole.

A. There were multiple times.

Q. Okay. Now --

A. Sorry.

Q. All right. Now, with regard to this particular case, did you listen to any tapes on the Nice logger system after June 2003?

A. Can you clarify who the custodians were in this case?

Q. Let me -- let me back up.

I think you testified that the Nice logger system recorded conversations at different locations; is that correct?

MR. COOPERSMITH: Objection.

Mischaracterizes the prior testimony.

A. Which locations?

Q. Any locations. The Nice logger system, what did it do?

A. Right. Yes --

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J. LLANES

Q. Did it record conversations?

A. It recorded trader -- the phone calls of the traders, yes.

Q. Okay. Now, this says, this declaration -- I'm asking you questions about paragraph 5.

Do you have that in front of you?

A. Yes.

Q. Okay. It says you listened to recordings made on the NiceLog logger in Refco's New York office; correct?

A. Yes.

Q. And that was numerous times?

A. Yes.

Q. Okay. Now, with regard to --

MR. COOPERSMITH: Objection. Leading.

Q. With regard to conversations by Spinner Drillman or Graham, did you specifically look for their conversations?

A. That is correct, yes.

Q. And how often did you do that?

A. In 2003, when I came in -- first of all, that request was occurring.

Q. Pardon?

A. That request had occurred.

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J. LLANES

Q. Okay.

A. I'm sorry. How can I state this? Prior to me taking over the IT department in New York --

Q. I'm only asking about you.

MR. COOPERSMITH: Objection. The question was asked, and the witness had not completed his answer.

A. With me -- with me listening to the tapes?

I did listen to once or two conversations to ensure that we were pulling the tapes for that Spinner, Drillman and Graham litigation request.

Q. Okay. Now, with regard to your use of the logger system in 2003 --

A. Yes.

Q. -- what did you do to listen to the conversation?

A. So the Nice logger system had a front end, of which -- the Nice logger system had a front end system, of which you were able to listen to WAV file conversations -- I'm sorry -- conversations that were converted into WAV files of specific -- specific, you know --

Q. I'm sorry.

A. -- conversations.

21 (Pages 78 to 81)

<p style="text-align: right;">Page 82</p> <p>1 J. LLANES</p> <p>2 Q. That's not what I asked you.</p> <p>3 My question is: What did you do to start</p> <p>4 listening to the conversations?</p> <p>5 MR. COOPERSMITH: Objection. Assumes facts</p> <p>6 not in evidence.</p> <p>7 A. Double click a restored WAV file.</p> <p>8 Q. Well, were the files on the logger system</p> <p>9 in WAV files or were they subsequently into WAV</p> <p>10 files?</p> <p>11 A. They were subsequently into WAV files.</p> <p>12 Q. So my question for you is: When you</p> <p>13 listened to conversations after 2003, you said</p> <p>14 numerous times you were only listening to WAV files?</p> <p>15 MR. COOPERSMITH: Objection.</p> <p>16 Mischaracterizes prior testimony.</p> <p>17 A. Whenever I -- understand that whenever I</p> <p>18 listened to them, right, I wasn't the primary</p> <p>19 individual that was pulling them. I would listen to</p> <p>20 one or two just to ensure that we were getting --</p> <p>21 how can I say this -- that the data that we were</p> <p>22 providing to counsel was workable data. Meaning the</p> <p>23 only time I listened to them was to ensure that it</p> <p>24 wasn't choppy. It, meaning data, meaning the WAV</p> <p>25 file, wasn't choppy. It wasn't -- that it was a</p>	<p style="text-align: right;">Page 83</p> <p>1 J. LLANES</p> <p>2 decent enough data that we could actually burn onto</p> <p>3 a disk, right.</p> <p>4 I wasn't listening just to listen to it. I</p> <p>5 was listening to ensure that what we were giving to</p> <p>6 counsel was data that was -- I was just double</p> <p>7 checking the integrity of it.</p> <p>8 Q. Okay.</p> <p>9 A. Understand not integrity that it was true</p> <p>10 and right, it was checking that it was available and</p> <p>11 audible -- audio-able. Does that make sense?</p> <p>12 Q. Yeah, but can I ask you a question? Were</p> <p>13 you essentially doing what you would interpret to be</p> <p>14 a quality control on those tapes?</p> <p>15 A. Sure.</p> <p>16 MR. COOPERSMITH: Objection. Leading.</p> <p>17 Q. Now, with regard to that, in 2003 whenever</p> <p>18 you went back and looked or listened to tapes, did</p> <p>19 you ever determine that the tapes were inaccurate?</p> <p>20 MR. COOPERSMITH: Objection.</p> <p>21 Mischaracterizes prior testimony.</p> <p>22 A. I can't say if they are inaccurate.</p> <p>23 Q. Well, did you ever find that there were</p> <p>24 gaps on the tapes that didn't make any sense in</p> <p>25 terms of the flow of conversations?</p>
<p style="text-align: right;">Page 84</p> <p>1 J. LLANES</p> <p>2 MR. COOPERSMITH: Objection. Leading.</p> <p>3 A. No.</p> <p>4 Q. Now, your experience with the taping system</p> <p>5 in New York, I think you testified, started in June</p> <p>6 of 2003, or sometime in 2003?</p> <p>7 A. In New York.</p> <p>8 MR. COOPERSMITH: Objection.</p> <p>9 Mischaracterizes prior --</p> <p>10 Q. Pardon?</p> <p>11 A. In New York?</p> <p>12 Q. Yeah.</p> <p>13 MR. COOPERSMITH: I'm sorry. Objection.</p> <p>14 Mischaracterizes prior testimony. I'm sorry</p> <p>15 for the interruptions, but I have to object for</p> <p>16 the record, Mr. Llanes.</p> <p>17 MR. CONTI: And why don't you take a breath</p> <p>18 before answering his questions so that he can</p> <p>19 get his objections in.</p> <p>20 A. Okay. Can you ask again? I'm sorry.</p> <p>21 Q. When did your experience with the taping</p> <p>22 system in New York begin?</p> <p>23 A. In June of 2003.</p> <p>24 Q. Prior to June of 2003, did you have any</p> <p>25 experience with the taping system in Chicago?</p>	<p style="text-align: right;">Page 85</p> <p>1 J. LLANES</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And what was that experience?</p> <p>4 A. There were litigation requests that we</p> <p>5 pulled in the Chicago office -- sorry. Yeah. I'm</p> <p>6 sorry. No, that's right.</p> <p>7 There were litigation -- we pulled -- I</p> <p>8 worked with John Beatty to pull conversations from</p> <p>9 the Chicago Nice logger system for both litigation</p> <p>10 requests and for traders who had requested to</p> <p>11 listen.</p> <p>12 Q. Now and how often did that occur prior to</p> <p>13 2003?</p> <p>14 A. There were several litigation requests when</p> <p>15 I was there in the Chicago office. I want to say</p> <p>16 maybe one or -- I'm sorry. Less than five.</p> <p>17 In terms of pulling the -- pulling the</p> <p>18 recordings or restoring -- restoring the recordings</p> <p>19 for traders, that was multiple times.</p> <p>20 Q. Pardon?</p> <p>21 A. That was multiple times.</p> <p>22 Q. Now, in any times that you pulled those</p> <p>23 conversations prior to 2003, did that include</p> <p>24 pulling conversations in the year 2001?</p> <p>25 A. Sure.</p>

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Q. Okay. And did you do that multiple times in 2001?

A. Sure.

Q. And any time when you pulled those conversations, did you find that there were technical problems with the tapes?

MR. COOPERSMITH: Just so we're clear, we are talking about the Chicago office?

MR. GUIDO: Chicago office.

A. Chicago office. I want to be accurate here. No.

Q. Okay. Now, at any time that you pulled tapes from the New York office, did you ever find that there were technical problems with the tapes?

MR. COOPERSMITH: I'm sorry, what time?

Q. Post 2003.

A. No.

Q. Did the taping system, the Nice logger system, in New York change any time between 2000 and 2003?

MR. COOPERSMITH: Objection. Lacks foundation.

A. Did it change? I cannot say.

Q. You can't say or you don't know?

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J. LLANES

A. Okay. So --

Q. Your answer was no.

A. My answer was no. But certainly in two thousand -- 2005, post bankruptcy, I did have conversations in terms of winding it down; who does -- who does the Nice logger system go to; does it get transferred over to Man in the assets that were purchased.

Q. In 2005?

A. In 2005, post bankruptcy.

Q. No, I understand that.

I'm asking you when you took over --

A. Right. I just -- I just want to clarify.

Q. -- did you meet with anybody to discuss the Nice logger system?

A. I did not, no.

Q. Did anybody ever tell you that the Nice logger system in New York in 2001 was different than the one that you were working with in Chicago in 2001?

MR. COOPERSMITH: Objection. Calls for speculation.

A. Right.

Q. Did anyone ever tell you?

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A. I do not know.

Q. Did anybody ever tell you it had changed?

MR. COOPERSMITH: Objection. Calls for speculation.

A. No, no one told me it had changed.

Q. When you took over the IT operations in the New York office, did you have meetings with people in the New York office about the Nice logger taping system when you assumed responsibility for its operations?

A. No.

Q. Who was responsible for the taping system, the Nice logger taping system, in New York prior to you joining --

A. Prior to --

Q. -- the New York office?

A. Prior to me joining, there was Melissa Montella and Gregg Blauth.

Can I ask you to repeat your question, your last question?

Q. When you took over the IT operations in the New York office, you had meetings with people in the New York office about the Nice logger taping system when you assumed responsibility for its operations.

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MR. COOPERSMITH: I'm sorry, the witness didn't answer the question.

A. I can speculate.

Q. I'm not asking you to speculate.

I'm asking did anybody tell you?

A. Nobody told me.

Q. Okay. Was it your understanding that the Nice logger system that was used in Chicago was the same Nice logger system that was used in New York in 2001?

MR. COOPERSMITH: Objection. Lacks foundation. Calls for speculation.

A. I can say it was possibly different because of the 9/11 incident.

Q. Do you know any way in which it was different?

MR. COOPERSMITH: Objection. Calls for speculation. Lacks foundation.

A. New hardware.

Q. Was the technology the same?

A. Oh, yes, because it's NiceLog. I don't think we used anything different.

Q. Okay.

A. It may have been -- yeah.

23 (Pages 86 to 89)

<p style="text-align: right;">Page 90</p> <p>1 J. LLANES</p> <p>2 Q. Would you consider yourself knowledgeable</p> <p>3 about the operations of the Nice logger system?</p> <p>4 A. Knowledgeable enough to know the</p> <p>5 functionality.</p> <p>6 Q. Okay. Let me ask you some questions --</p> <p>7 A. Can I expand on that? Knowledgeable enough</p> <p>8 to know the functionality, not knowledgeable enough</p> <p>9 to know specifics like what version we were using.</p> <p>10 Q. Pardon?</p> <p>11 A. Specifics such as what version we were</p> <p>12 using.</p> <p>13 Q. Okay. Now, you were asked some questions</p> <p>14 about the large thick exhibit.</p> <p>15 What number do you have on that?</p> <p>16 A. Exhibit 3.</p> <p>17 Q. Okay. Exhibit 3. You were asked some</p> <p>18 questions about some pages on that exhibit. Let me</p> <p>19 direct your attention to those pages. I think one</p> <p>20 of them was page 8.</p> <p>21 Do you see on page 8 it has the -- it looks</p> <p>22 like Chapter 5, Setting Up Selective Recording?</p> <p>23 A. Yes.</p> <p>24 Q. And then it makes reference to various</p> <p>25 pages in that. And I think you were directed to</p>	<p style="text-align: right;">Page 91</p> <p>1 J. LLANES</p> <p>2 take a look at page 143.</p> <p>3 Will you take a look at page 143?</p> <p>4 A. Yes, I'm there.</p> <p>5 Q. And page 143 it says: "The NICE Recording</p> <p>6 Planner is an optimal feature that enables you to</p> <p>7 set up selective recording programs at a site."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Do you know whether or not that feature was</p> <p>11 activated in Chicago when you were working with the</p> <p>12 Nice logger system?</p> <p>13 MR. COOPERSMITH: At what time?</p> <p>14 Q. After -- prior -- 2001.</p> <p>15 MR. COOPERSMITH: Objection. Assumes facts</p> <p>16 not in evidence.</p> <p>17 A. Do I know in 2001 if in Chicago we used the</p> <p>18 selective set up recording?</p> <p>19 Q. Uh-huh.</p> <p>20 A. No, I do not know.</p> <p>21 Q. What was your understanding of how the</p> <p>22 system worked in Chicago in 2001?</p> <p>23 A. That we captured -- we captured the</p> <p>24 recordings of traders, traders that were on the</p> <p>25 floor, and the brokers that were on the desk in the</p>
<p style="text-align: right;">Page 92</p> <p>1 J. LLANES</p> <p>2 office.</p> <p>3 Q. Now your declaration, I think you were</p> <p>4 asked about -- if you look at, I think it's</p> <p>5 Exhibit 2 -- you were asked about paragraph 3. And</p> <p>6 you were asked specifically about this sentence that</p> <p>7 says: "That system," referring to the Nice logger</p> <p>8 system, "recorded all the conversations that took</p> <p>9 place on or near telephones used on Refco's trading</p> <p>10 desk."</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And then I think you were then asked</p> <p>13 about paragraph -- page 145 of Exhibit 3, which</p> <p>14 talks about selective recording.</p> <p>15 At any time did you observe the Nice logger</p> <p>16 system working in Chicago, did you ever notice that</p> <p>17 the selective recording function had been turned on?</p> <p>18 MR. COOPERSMITH: Objection. Lacks</p> <p>19 foundation. Calls for speculation.</p> <p>20 A. Give me a second. I want to read this.</p> <p>21 My understanding of the Nice logger feature</p> <p>22 on Chapter 5, selective -- Setting Up Selective</p> <p>23 Recording, without reading this, is that there are</p> <p>24 specific -- it's a specific feature within NiceLog</p> <p>25 to set up a specific type of recording, right. And,</p>	<p style="text-align: right;">Page 93</p> <p>1 J. LLANES</p> <p>2 again, I don't know any of that.</p> <p>3 I will tell you that from what I know, the</p> <p>4 way NiceLog was distributed out -- out in Refco, was</p> <p>5 that the system was out there capturing specific</p> <p>6 lines and users, again, specifically for traders.</p> <p>7 It wasn't a system that was distributed in all of</p> <p>8 the full -- the full breadth of the Refco phone</p> <p>9 system, right. It was more of -- it was more of,</p> <p>10 okay, I'm going to take this person; I'm going to</p> <p>11 take that person; I'm going to take trader X, Y and</p> <p>12 Z, right.</p> <p>13 And, again, without -- without reading this</p> <p>14 or understanding this NiceLog system, or Chapter 5,</p> <p>15 I should say, all I know is that we were able to</p> <p>16 capture -- we were able to capture specific lines</p> <p>17 and specific locations, right. Whether or not</p> <p>18 Chapter 5 it was -- it was done by the selective set</p> <p>19 up recording on Chapter 5 or whether or not that was</p> <p>20 just some other method, I cannot tell you that's</p> <p>21 what they used.</p> <p>22 Q. But your declaration says the system</p> <p>23 recorded all conversations that took place on or</p> <p>24 near the telephones used on Refco's traders' desks.</p> <p>25 My question for you is: Any of those phone</p>

<p style="text-align: right;">Page 94</p> <p>1 J. LLANES</p> <p>2 lines that were set up on traders' desk, did you</p> <p>3 activate selective recording?</p> <p>4 MR. COOPERSMITH: Objection. Lacks</p> <p>5 foundation. Calls for speculation.</p> <p>6 A. I did not call to utilize the selective set</p> <p>7 up.</p> <p>8 Q. Did -- do you know whether or not anyone</p> <p>9 did?</p> <p>10 A. I do not know of anyone.</p> <p>11 Q. Was it your understanding that the system,</p> <p>12 when it was connected to the line, was intended to</p> <p>13 capture all conversations on that line?</p> <p>14 A. To my understanding, yes.</p> <p>15 Q. Both in New York and Chicago?</p> <p>16 MR. COOPERSMITH: Objection. Lacks</p> <p>17 foundation. Calls for speculation.</p> <p>18 Q. You may answer.</p> <p>19 A. Yes.</p> <p>20 Q. Now, on page 155 of this document it talks</p> <p>21 about recording programs that prevent recording.</p> <p>22 A. Yes.</p> <p>23 Q. Do you know whether in Chicago or New York</p> <p>24 in 2001 the Negative Recording Program was ever</p> <p>25 activated on the lines on the trading desks?</p>	<p style="text-align: right;">Page 95</p> <p>1 J. LLANES</p> <p>2 MR. COOPERSMITH: Objection. Lacks</p> <p>3 foundation. Calls for speculation.</p> <p>4 A. I do not know.</p> <p>5 Q. Were you ever told that was the case?</p> <p>6 A. I was not told.</p> <p>7 Q. Now, your declaration, your initial</p> <p>8 declaration, which is Exhibit 2, I think --</p> <p>9 A. Yes.</p> <p>10 Q. -- has attached to it copies of Sony</p> <p>11 cassettes. And when you signed that declaration,</p> <p>12 did you review the descriptions on the cassettes</p> <p>13 that were provided to you as Exhibits I through IV?</p> <p>14 A. I reviewed them briefly, yes.</p> <p>15 Q. And did you -- did you recognize any of the</p> <p>16 writing on any of those?</p> <p>17 A. I cannot tell you who wrote that, no.</p> <p>18 Q. Pardon?</p> <p>19 A. I cannot tell you who wrote that.</p> <p>20 Q. Okay. So you don't know? You can't</p> <p>21 identify the writing?</p> <p>22 A. I can't identify them, no, I cannot.</p> <p>23 Q. Will you take a look at all of them just to</p> <p>24 make sure.</p> <p>25 A. I cannot recognize any of the writing.</p>
<p style="text-align: right;">Page 96</p> <p>1 J. LLANES</p> <p>2 Q. Now I'd like to go through your Exhibit 2,</p> <p>3 your declaration --</p> <p>4 A. Sure.</p> <p>5 Q. -- and ask you some specific questions</p> <p>6 about that.</p> <p>7 In paragraph 2 on page 1 it says: "As the</p> <p>8 head of Refco's IT operations, I acquired the</p> <p>9 experience and knowledge to make this declaration</p> <p>10 about Refco's audio recordings of telephone and</p> <p>11 other conversations between and among Refco's</p> <p>12 personnel and others."</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Is that true?</p> <p>16 A. Yes.</p> <p>17 Q. Now, I think you testified that you don't</p> <p>18 really know the details of the technology that's</p> <p>19 embedded in the NICE system; is that correct?</p> <p>20 A. Correct.</p> <p>21 Q. But you do know how it functions?</p> <p>22 A. Correct.</p> <p>23 Q. And you do know what it does and doesn't</p> <p>24 do?</p> <p>25 MR. COOPERSMITH: Objection. Leading.</p>	<p style="text-align: right;">Page 97</p> <p>1 J. LLANES</p> <p>2 A. Correct.</p> <p>3 Q. And based on your experience, do you know</p> <p>4 that it was placed on the trading desks of Refco's</p> <p>5 associated persons?</p> <p>6 MR. GUIDO: Objection. Lacks foundation.</p> <p>7 Leading.</p> <p>8 A. I do know that that's the way it was</p> <p>9 installed.</p> <p>10 Q. Okay. And in paragraph 3 it says: "Refco</p> <p>11 recorded the conversations of its registered</p> <p>12 representatives, including those telephone</p> <p>13 conversations with those with whom they discussed</p> <p>14 security transactions and other matters."</p> <p>15 Is that correct?</p> <p>16 A. Yes.</p> <p>17 Q. What was -- why did Refco do that?</p> <p>18 MR. COOPERSMITH: Objection. Calls for</p> <p>19 speculation.</p> <p>20 Q. To your knowledge.</p> <p>21 A. Why did they record the conversations?</p> <p>22 Q. Uh-huh.</p> <p>23 A. For one, I believe it was a regulatory</p> <p>24 requirement. The second one being that certainly to</p> <p>25 get the accuracy of the trades and discussions that</p>

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were occurring at any given time on a trader's desk for disputes, potential disputes, to clarify potential disputes on trades.

Q. So the purpose was to ensure accuracy; is that fair?

A. That is correct.

Q. Now, I think you were asked a number of questions about the very last word on page 1 that says "Sony DD2 and Sony DD3 disks".

Do you see that?

A. Yes.

Q. Now, you indicated that that should essentially say tapes; is that fair?

A. That is correct.

Q. Okay. And take a look at page -- take a look at page 19.

A. Okay.

Q. See where it says "Logger 4 Tape 5 8/29/01."

Do you see that?

A. I do see that.

Q. Do you see right above that it says DD something there?

A. Yes.

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occurred at a time different than when it was operating?

MR. COOPERSMITH: Objection. Lacks foundation. Speculation. Compound. Unintelligible.

A. I can tell you that trader --

Q. Please answer my question first, and then you can explain.

A. Okay.

Q. Yes or no.

A. Ask the question again.

Q. Can you think of any way that the Nice logger system could have recorded conversations that occurred at a time different than when it was operating?

MR. COOPERSMITH: Object. Same objections.

Q. Do you want me to clarify?

A. Yes.

Q. Okay. Do you know whether or not the Nice logger system could ever have recorded a conversation at a time other than when the conversation occurred?

MR. COOPERSMITH: Same objections.

A. Yes.

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Q. 3, Digital Data Storage?

A. Correct.

Q. Is that a tape?

A. That is -- I'm sorry.

Q. Based on your experience, that's a tape?

A. That is a tape.

Q. You weren't trying to mislead anyone by using the word "disks", were you?

MR. COOPERSMITH: Objection. Leading.

A. I was not, sir.

Q. Let me ask the question in another way.

Were you trying to mislead anybody by using the term "disks"?

A. I was not.

Q. And paragraph 5 on page 2 of your declaration, Exhibit 2, says: "From personal familiarity with the Nice system, I know that it recorded these conversations at or near the time when persons using the Refco's telephone system conducted these conversations."

Is that statement true?

A. Yes.

Q. Can you think of any way that the Nice logger system could have recorded conversations that

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Q. Okay. How would it do that?

A. Occasionally traders would keep their phones off the hook. So as we noted before, on ARD phones, which is automatic ring down to the trader's lines, if the phone was off the hook, obviously it would be -- it would continue to ring down to the floors, which is in the pits, but yet the Nice logger system would continue to record it.

If your question -- if -- that's how I understand your question. If your question is if at any time the Nice logger system recorded something that it was not supposed to record --

Q. No.

A. -- the answer is no.

Q. Are you asking me for clarification?

A. Yes.

Q. My question is -- let me give you a hypothetical. I'm sitting here. I'm asking you a question.

MR. COOPERSMITH: Objection. Calls for a hypothetical.

Q. Did the Nice logger system ever record a conversation that occurred in the past?

MR. COOPERSMITH: Objection. Calls for

26 (Pages 98 to 101)

<p style="text-align: right;">Page 102</p> <p>1 J. LLANES</p> <p>2 speculation.</p> <p>3 A. No.</p> <p>4 Q. Did it ever record a conversation that was</p> <p>5 going to occur in the future?</p> <p>6 A. Of course not.</p> <p>7 Q. So all conversations on the Nice logger</p> <p>8 system were recorded at or near the time the person</p> <p>9 using the telephone system conducted the</p> <p>10 conversations?</p> <p>11 MR. COOPERSMITH: Objection. Leading.</p> <p>12 Lacks foundation.</p> <p>13 A. Say it again.</p> <p>14 Q. Look at paragraph 5.</p> <p>15 A. Yes, I mean --</p> <p>16 Q. I just repeated paragraph 5 for you.</p> <p>17 A. Yes.</p> <p>18 Q. Paragraph 6 says: "I also know that Refco</p> <p>19 made these recordings as an ordinary practice in the</p> <p>20 course of its regularly conducted business."</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Is that true?</p> <p>24 A. Yes.</p> <p>25 Q. And was the reason to ensure that trading</p>	<p style="text-align: right;">Page 103</p> <p>1 J. LLANES</p> <p>2 activity was accurate?</p> <p>3 A. Yes. And I also believe it was for</p> <p>4 regulatory purposes.</p> <p>5 Q. Now, it says in or about July --</p> <p>6 paragraph 7 says: "July 2003 I was the custodian of</p> <p>7 the above-referenced recordings."</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Now, you were not the head of IT in Chicago</p> <p>11 in July of 2003, were you?</p> <p>12 A. I was not.</p> <p>13 Q. Okay. So did you have custody of the</p> <p>14 recordings in Chicago in 2003?</p> <p>15 A. I did not.</p> <p>16 Q. Okay. And is your reference to the</p> <p>17 above-referenced recordings those that are referred</p> <p>18 to in paragraph 4 of your declaration?</p> <p>19 A. If these were the same tapes that were in</p> <p>20 that tape library, yes.</p> <p>21 Q. Okay. Now, let me ask you about how tapes</p> <p>22 were maintained at Refco. And I guess I need to go</p> <p>23 back to how they were created.</p> <p>24 Did the Nice logger system record directly</p> <p>25 to Sony DD2/DD3 tapes?</p>
<p style="text-align: right;">Page 104</p> <p>1 J. LLANES</p> <p>2 A. No.</p> <p>3 Q. Okay. What did it record to?</p> <p>4 A. It recorded on spinning disks, hard drive</p> <p>5 disks.</p> <p>6 Q. Okay.</p> <p>7 A. And then after a period of time it would</p> <p>8 then -- it would then transfer that information to</p> <p>9 these -- these magnetic tape -- these disks.</p> <p>10 Q. Okay. And then when they were transferred</p> <p>11 to the magnetic tapes, did the magnetic tapes stay</p> <p>12 in the machine?</p> <p>13 A. They did not.</p> <p>14 Q. Okay. What happened to the tapes when they</p> <p>15 filled up?</p> <p>16 A. Typically after a period of two weeks they</p> <p>17 would be rotated out.</p> <p>18 Q. Okay. And where did they go?</p> <p>19 A. In Chicago, I do not know. In New York</p> <p>20 they went to that --</p> <p>21 Q. To what?</p> <p>22 A. To the aforementioned area. The area</p> <p>23 where, again, the close -- in the locked cabinet</p> <p>24 behind the locked cage.</p> <p>25 Q. Okay. In 2003?</p>	<p style="text-align: right;">Page 105</p> <p>1 J. LLANES</p> <p>2 A. 2003.</p> <p>3 Q. Okay. Do you know where they went in 2001?</p> <p>4 A. I cannot tell you.</p> <p>5 Q. Okay. Was it Refco's practice to keep the</p> <p>6 tapes that were extracted from the loggers in a</p> <p>7 secure location?</p> <p>8 MR. COOPERSMITH: At what period of time?</p> <p>9 MR. GUIDO: At any time.</p> <p>10 A. Yes.</p> <p>11 Q. And when you became the head of the office</p> <p>12 in New York in 2003, was that the case?</p> <p>13 A. Yes.</p> <p>14 Q. Prior to you becoming the head of the</p> <p>15 office in 2003, was that the case?</p> <p>16 MR. COOPERSMITH: Objection. Lacks</p> <p>17 foundation. Calls for speculation.</p> <p>18 A. I do not know.</p> <p>19 Q. Now, you were the head of the office in</p> <p>20 2003; right?</p> <p>21 A. I was the head of the IT department, yes.</p> <p>22 Q. IT. And you were responsible for the Nice</p> <p>23 logger machine operating in 2003; correct?</p> <p>24 A. It was under my direction, yes.</p> <p>25 Q. Okay. That's fine.</p>

<p style="text-align: right;">Page 106</p> <p>1 J. LLANES</p> <p>2 Now, who was responsible for the tapes in</p> <p>3 2003?</p> <p>4 A. There were two individuals.</p> <p>5 Q. Who were they?</p> <p>6 A. Melissa Montella and Tony Visconti.</p> <p>7 Q. Now, prior to 2003 who was responsible for</p> <p>8 the tapes?</p> <p>9 A. My understanding was my -- my predecessor,</p> <p>10 Gregg Blauth.</p> <p>11 Q. Okay. Now when you took over in 2003, did</p> <p>12 you -- did you learn where the tapes were stored</p> <p>13 after they were extracted from the Nice logger?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. And what did you learn?</p> <p>16 A. I learned that they were in the locked</p> <p>17 cabinet behind a locked cage at 200 Liberty.</p> <p>18 Q. Okay. Now, had any of those tapes been</p> <p>19 stored in a temporary secure location prior to being</p> <p>20 in the locked cage at 200 --</p> <p>21 A. At 200 Liberty?</p> <p>22 Q. Pardon?</p> <p>23 A. At 200 Liberty?</p> <p>24 Q. Yeah.</p> <p>25 A. No, not to my knowledge.</p>	<p style="text-align: right;">Page 107</p> <p>1 J. LLANES</p> <p>2 Q. Not to your knowledge.</p> <p>3 Were the tapes ever, to your knowledge, in</p> <p>4 an unsecure location?</p> <p>5 MR. COOPERSMITH: Objection. Lacks</p> <p>6 foundation. Calls for speculation.</p> <p>7 A. Not to my knowledge.</p> <p>8 Q. Had anyone ever told you that they weren't</p> <p>9 secure?</p> <p>10 A. No one ever told me.</p> <p>11 MR. GUIDO: Let's take a short five-minute</p> <p>12 break.</p> <p>13 (Recess taken from 3:06 P.M. to</p> <p>14 3:11 P.M.)</p> <p>15 BY MR. GUIDO:</p> <p>16 Q. I think you were asked a question about</p> <p>17 paragraph 7 of your supplemental declaration, on</p> <p>18 page 31 of Exhibit 4. Exhibit 4 starts out Second</p> <p>19 Declaration of Kenneth Guido.</p> <p>20 A. Okay.</p> <p>21 Q. And I think you were asked whether or not</p> <p>22 you know whether the particular tapes that are</p> <p>23 involved in this case were at that location.</p> <p>24 Do you recall that question? Do you recall</p> <p>25 the question?</p>
<p style="text-align: right;">Page 108</p> <p>1 J. LLANES</p> <p>2 A. Can you -- can you recall the question?</p> <p>3 Q. Do you recall being asked whether or not</p> <p>4 you know whether or not the tapes that the Mayer</p> <p>5 Brown firm were producing to the SEC were in that</p> <p>6 storage area mentioned in paragraph 7 when you</p> <p>7 became the head of the IT operation in New York?</p> <p>8 A. Okay. I do recall that question.</p> <p>9 Q. Okay. You recall that question.</p> <p>10 And do you recall being asked whether --</p> <p>11 what your purpose of writing paragraph 7 was?</p> <p>12 MR. COOPERSMITH: Objection. I think he</p> <p>13 testified that he didn't write it.</p> <p>14 Q. You may answer the question.</p> <p>15 Do you want me to rephrase the question?</p> <p>16 A. Yes, because actually --</p> <p>17 Q. Let me rephrase the question.</p> <p>18 Paragraph 7 says: "After assuming</p> <p>19 leadership of the Information Technology department</p> <p>20 in New York in June 2003, I learned that tapes made</p> <p>21 in the New York office were stored at 200 Liberty</p> <p>22 Street in New York City."</p> <p>23 Do you see that sentence?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. Is that statement true?</p>	<p style="text-align: right;">Page 109</p> <p>1 J. LLANES</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And was it the practice, prior to</p> <p>4 you assuming the leadership of the office in 2003,</p> <p>5 to your knowledge, to have those tapes stored at 200</p> <p>6 Liberty Street in New York City?</p> <p>7 MR. COOPERSMITH: Objection. Lacks</p> <p>8 foundation. Calls for speculation.</p> <p>9 A. To my knowledge that is where they were</p> <p>10 stored.</p> <p>11 Q. Okay. And how did you get that knowledge?</p> <p>12 A. Because if you open up the drawers, there</p> <p>13 were tapes there that indicated that date.</p> <p>14 Q. Okay. Now, and when you joined -- or you</p> <p>15 became the head of the department in 2003. Did you</p> <p>16 observe in that locked cabinet there were tapes</p> <p>17 prior to June of 2003 in those locked cabinets?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. Now, was -- I want to repeat my</p> <p>20 question again.</p> <p>21 Specifically with regard to this locked</p> <p>22 cabinet, was this location and this locked cabinet</p> <p>23 inside a locked equipment cage the method that you</p> <p>24 understand that Refco had used to secure those tapes</p> <p>25 off the Nice logger system?</p>

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1 J. LLANES
 2 MR. COOPERSMITH: Objection to the phrase
 3 "those tapes". I'm not sure which tapes we are
 4 referring to.
 5 A. Yes.
 6 Q. Now, I think you were asked a number of
 7 questions about the Mayer Brown firm --
 8 A. Yes.
 9 Q. -- producing tapes?
 10 A. Producing tapes for them, yes.
 11 Q. And you provided the tapes to them, or you
 12 had someone provide the tapes to them; is that
 13 correct?
 14 A. That is correct.
 15 Q. And what was the purpose of providing them
 16 the tapes?
 17 A. They requested the tapes.
 18 Q. Okay. Do you know why they requested the
 19 tapes?
 20 A. I do not know.
 21 Q. Did anyone tell you that part -- one of the
 22 reasons was to produce the tapes to the SEC?
 23 MR. COOPERSMITH: Objection. Leading.
 24 A. No.
 25 Q. Well, did you ever, during the time that

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1 J. LLANES
 2 3:23 P.M.)
 3 BY MR. GUIDO:
 4 Q. While we are waiting for this, why don't I
 5 ask you some conclusion questions.
 6 To your knowledge, did the Nice logger
 7 system ever record conversations that did not occur?
 8 A. No.
 9 Q. Did the tapes generated by the logger
 10 system identify the location of the conversation
 11 recorded?
 12 A. The tapes did not identify the location,
 13 the Nice logger system did.
 14 Q. Okay. The Nice logger system did?
 15 A. Yes.
 16 Q. The information on the Nice logger system,
 17 where the conversation recorded, did it also include
 18 the location?
 19 A. Sorry, say again. Did the Nice logger
 20 system include the location?
 21 Q. Yes. Did the Nice logger --
 22 A. The Nice logger, yes, it identified the
 23 location and the phone line.
 24 Q. Okay. Was that called channel?
 25 A. Yes.

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1 J. LLANES
 2 you were pulling together tapes for the Mayer Brown
 3 firm, learn that they were being produced to the
 4 SEC?
 5 A. Sorry, I have to think of this. No.
 6 Q. So when you testified earlier that you were
 7 pulling tapes for Mayer Brown's use to provide to
 8 the SEC, that was inaccurate?
 9 A. No. No. Hang on. Sorry.
 10 I believe we actually hit on whether or not
 11 it was for the DOJ and not for the SEC.
 12 Q. Pardon?
 13 A. I believe we -- when we were talking about
 14 that question, it was specifically about the DOJ and
 15 not for the SEC. Did I know whether or not Mayer
 16 Brown was working for the DOJ -- I cannot recall
 17 this.
 18 MR. GUIDO: Could we make copies of the two
 19 documents that Mr. Llanes produced.
 20 MR. COOPERSMITH: Oh yeah. Sure. I forgot
 21 about that.
 22 Do you want to take a break so I can do
 23 that?
 24 MR. GUIDO: Let's take a break.
 25 (Recess taken from 3:19 P.M. to

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1 J. LLANES
 2 Q. And it would record -- the Nice logger
 3 system would record the channel; correct?
 4 A. Correct.
 5 Q. Did it also record the logger on which it
 6 was recorded?
 7 A. Right. It would identify which logger that
 8 channel was associated with.
 9 Q. Okay.
 10 A. Yes.
 11 Q. All right. Did it also have the date range
 12 or the time range of the conversation?
 13 A. Yes.
 14 Q. And did it also have the date of the
 15 conversation?
 16 A. Yes.
 17 Q. And did it also have a thing called a
 18 session number?
 19 A. I don't recall a session number. To be
 20 honest with you, I don't recall the session number
 21 on that.
 22 Q. Okay. Would the Nice logger record
 23 anything other than what transpired at the time of
 24 the conversation that was recorded?
 25 A. Not to my knowledge. It was fairly

29 (Pages 110 to 113)

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accurate. It was an accurate system.

Q. So if it had a session number for each of the conversations recorded, would that be accurate?

A. I'm sorry, yes. Yes. I say I'm sorry because, yes, I know what you are saying now. Per session was each hang up -- each particular conversation, hang up. After the phone was hung up or after the conversation had ended, the session number would be created.

Q. Please don't speculate.

A. Okay.

Q. I think you just speculated.

A. Okay.

Q. Don't do that. All right.

Is it -- did the logger record something as a session from the time it was activated by sound to the time sound ceased?

A. By sound?

Q. Yeah.

A. Or by --

Q. Voice.

A. It was typically when the phone was picked up.

Q. Was it also when it was off the hook?

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A. If it was -- if the phone was off the hook, it would pick up, yes.

Q. So it would pick up all of the sound until sound ceased; correct?

A. It would pick up until the phone was hung up.

Q. And did -- and were those recorded as separate session numbers?

A. You asked me not to speculate, so I will say --

Q. You just don't know?

A. I don't know.

Q. Were any of the tapes ever altered?

MR. COOPERSMITH: Objection. Lacks foundation. Calls for speculation.

Q. If you know.

A. Not that I know of.

MR. GUIDO: Do you have the exhibits?

MR. COOPERSMITH: So I will put on the record that the witness produced two documents. One is a one-page document. The other is a two-page document. I've had someone make copies here at our office, and I'm now giving them to Mr. Guido, keeping a copy for myself.

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MR. CONTI: Did you get both sides?

MR. COOPERSMITH: He can --

MR. CONTI: They were double sided.

MR. GUIDO: This one is double sided.

MR. COOPERSMITH: So I will take the original back. The other one is not double sided?

THE WITNESS: There is something on the back also.

MR. COOPERSMITH: They are both double sided.

(Recess taken from 3:29 P.M. to 3:30 P.M.)

BY MR. GUIDO:

Q. While we are waiting for that, I have one other follow-up question for the sessions. And that is did -- when you went back to listen to tapes, did you learn that there were multiple phone conversations within one session recorded on the logger?

A. I do not know.

Q. You just don't recall?

A. I don't recall.

MR. GUIDO: Let's wait for the documents.

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(Pause.)

MR. COOPERSMITH: So at Mr. Guido's request we had a secretary here copy the documents provided by the witness. It was pointed out that they were double sided copies; so now they are copied in double sided form.

MR. GUIDO: I'd like to have the court reporter mark as Exhibit 6 a one-page document that has on the first page it looks like a business card John G. Llanes, Director of New York City IT Operations, and it's a handwritten note.

And then I'd like to have marked as Exhibit 7 a --

MR. CONTI: We would like to keep the originals. Can we have one of the copies?

MR. GUIDO: Is that the original?

MR. CONTI: This is the original.

MR. GUIDO: Do you want to keep the originals?

MR. CONTI: Right.

MR. COOPERSMITH: That's fine by me. But you are going to mark the exhibit, and that will be the copy the witness looks at, I

30 (Pages 114 to 117)

<p style="text-align: right;">Page 118</p> <p>1 J. LLANES</p> <p>2 assume, the marked copy.</p> <p>3 MR. CONTI: I will pass that down to the</p> <p>4 reporter.</p> <p>5 MR. GUIDO: That's Exhibit 6.</p> <p>6 (Llanes Exhibit 6 marked for</p> <p>7 identification.)</p> <p>8 MR. GUIDO: And I'd like to have marked as</p> <p>9 Exhibit 7 a copy of a two-page letter dated</p> <p>10 May 8, 2003, from John Hewitt to Christopher</p> <p>11 Ehrman.</p> <p>12 (Llanes Exhibit 7 marked for</p> <p>13 identification.)</p> <p>14 BY MR. GUIDO:</p> <p>15 Q. Mr. Llanes, will you take a look at</p> <p>16 Exhibit 6.</p> <p>17 A. Yes.</p> <p>18 Q. Will you tell us what that is?</p> <p>19 A. So as I recall it, this was in -- this was</p> <p>20 in response to post bankruptcy --</p> <p>21 Q. Excuse me. Let me rephrase the question.</p> <p>22 A. Yes.</p> <p>23 Q. Where did you get this document?</p> <p>24 A. So I got this document from my files.</p> <p>25 Q. And how did it appear in your files?</p>	<p style="text-align: right;">Page 119</p> <p>1 J. LLANES</p> <p>2 A. This was during bankruptcy that I got this</p> <p>3 file.</p> <p>4 Q. Was this provided to you by the SEC?</p> <p>5 A. Probably. I'm not sure now. I'm</p> <p>6 speculating.</p> <p>7 Q. Yeah, please don't speculate.</p> <p>8 A. I don't recall.</p> <p>9 Q. Okay. You don't recall how you got this.</p> <p>10 Is this your handwriting?</p> <p>11 A. It is my handwriting, yes.</p> <p>12 Q. Okay. And it says: "Remainder of 2001</p> <p>13 tapes. All others should be with prior counsel.</p> <p>14 Questions - please do not hesitate to contact me."</p> <p>15 And then there is some initials.</p> <p>16 Are those your initials?</p> <p>17 A. Those are my initials, yes.</p> <p>18 Q. And this was a note that you wrote at some</p> <p>19 point in time?</p> <p>20 A. That is correct.</p> <p>21 Q. Okay. And it pertains to a production of</p> <p>22 2001 Nice logger tapes?</p> <p>23 MR. COOPERSMITH: Objection. Leading.</p> <p>24 A. Yes.</p> <p>25 Q. Now, in the back it says something.</p>
<p style="text-align: right;">Page 120</p> <p>1 J. LLANES</p> <p>2 Can you read that into the record?</p> <p>3 A. Yep. It says: "XX Refco XX, Projects,</p> <p>4 Current Projects, Wind Down, SEC."</p> <p>5 Q. Okay. Is that reference to a file that it</p> <p>6 came out of?</p> <p>7 A. This is in reference -- yes.</p> <p>8 Q. Okay. And it says SEC.</p> <p>9 What does that refer to?</p> <p>10 A. Securities and Exchange Commission.</p> <p>11 Q. Okay. Now I'd like you to take a look at</p> <p>12 Exhibit 7.</p> <p>13 A. Yes.</p> <p>14 Q. That makes reference to a transmittal of</p> <p>15 tapes by Mayer Brown to the SEC on May 8th, 2003.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Did you have anything to do with that</p> <p>19 production?</p> <p>20 A. No, because it was prior to me being there.</p> <p>21 Q. Okay. Does your note that says remainder</p> <p>22 of 2001 tapes, was that included in Exhibit 6</p> <p>23 because you knew an earlier production had taken</p> <p>24 place?</p> <p>25 A. That is correct.</p>	<p style="text-align: right;">Page 121</p> <p>1 J. LLANES</p> <p>2 Q. And was it your understanding that that</p> <p>3 earlier production had been to the SEC?</p> <p>4 A. I cannot remember.</p> <p>5 Q. Well, why does it -- why does Exhibit 6</p> <p>6 come out of a file that was marked SEC?</p> <p>7 A. It most likely is. Why is it in there?</p> <p>8 Again, that was during the wind down, and I probably</p> <p>9 just stuck this -- these two exhibits in there, in</p> <p>10 that -- in my electronic file.</p> <p>11 Q. Well, I mean, so these -- these two</p> <p>12 exhibits came from an electronic file?</p> <p>13 A. Correct.</p> <p>14 Q. Do you know how you received them to place</p> <p>15 them in your electronic file?</p> <p>16 A. Most likely e-mail.</p> <p>17 Q. Pardon?</p> <p>18 A. Most likely via e-mail.</p> <p>19 Q. E-mail, okay.</p> <p>20 Can you tell by going back to that file</p> <p>21 who -- who produced these to you?</p> <p>22 A. I cannot, because it was just these</p> <p>23 documents themselves. Exhibit 6, I believe, was a</p> <p>24 JPEG. You know, I would have to look again. And I</p> <p>25 believe Exhibit 7 was -- it may have been a JPEG as</p>

<p style="text-align: right;">Page 122</p> <p>1 J. LLANES</p> <p>2 well.</p> <p>3 Q. Well, in Exhibit 6 it says: "Remainder of</p> <p>4 2001 tapes." Okay. And then it says: "Questions -</p> <p>5 please do not hesitate to contact me."</p> <p>6 What were you referring to about questions?</p> <p>7 A. If they have any questions. If whoever was</p> <p>8 receiving the rest of these tapes had any questions,</p> <p>9 had any additional questions, they want more voice</p> <p>10 recordings, did they want, you know, where did these</p> <p>11 tapes come from.</p> <p>12 Q. Did anyone from the SEC call you and</p> <p>13 discuss the card on which Exhibit 6 was copied from?</p> <p>14 A. I cannot remember. I'm sure --</p> <p>15 Q. Did you ever discuss the card with Jim</p> <p>16 McHale?</p> <p>17 A. Yes, probably.</p> <p>18 Q. Now, please don't speculate.</p> <p>19 A. Okay.</p> <p>20 Q. To the best of your knowledge --</p> <p>21 A. To the best of my knowledge, someone</p> <p>22 contacted me, and it was Jim McHale.</p> <p>23 Q. Pardon?</p> <p>24 A. And it was Jim McHale.</p> <p>25 Q. Or was it Ken Guido?</p>	<p style="text-align: right;">Page 123</p> <p>1 J. LLANES</p> <p>2 MR. COOPERSMITH: Hold on. The witness</p> <p>3 wasn't done with his answer.</p> <p>4 A. Let me back up. Everything is just so</p> <p>5 blurred to me right now, because I cannot recall now</p> <p>6 if this particular card that was sent with the tapes</p> <p>7 was for the -- was for the Spinner/Drillman case</p> <p>8 that was back in 2003 or if this was for the</p> <p>9 remainder of the tapes that we just gave post the</p> <p>10 bankruptcy in 2005.</p> <p>11 So because I foolishly didn't put a date on</p> <p>12 here, I can't tell you which one -- which one this</p> <p>13 is actually for.</p> <p>14 Q. Okay. Can I ask some clarifying questions?</p> <p>15 I understand that this is many years after the fact,</p> <p>16 and so it's important if you remember, you remember.</p> <p>17 If you don't remember, you don't remember.</p> <p>18 A. Okay.</p> <p>19 Q. Let me -- so, you know, with regard to this</p> <p>20 card, okay, was the card inserted in one of the</p> <p>21 boxes produced by Refco in response to one of the</p> <p>22 investigations?</p> <p>23 A. Yes.</p> <p>24 Q. And was one of the investigations the SEC's</p> <p>25 investigation of Spinner and Drillman?</p>
<p style="text-align: right;">Page 124</p> <p>1 J. LLANES</p> <p>2 A. To my knowledge, yes.</p> <p>3 Q. Okay. And was there also an SEC</p> <p>4 investigation of Refco?</p> <p>5 A. Yes.</p> <p>6 Q. And were tapes from the Nice logger system</p> <p>7 produced in both of those investigations?</p> <p>8 A. Yes.</p> <p>9 Q. So when you signed your declaration,</p> <p>10 Exhibit 2, that had attached to it labels of various</p> <p>11 audio tapes on it, to your knowledge, was that --</p> <p>12 were those tapes produced in either the Spinner and</p> <p>13 Drillman SEC investigation or the SEC's</p> <p>14 investigation of Refco?</p> <p>15 A. Yes.</p> <p>16 Q. It was one or the other?</p> <p>17 A. Yes, it was one or the other.</p> <p>18 Q. And to the best of your knowledge, those</p> <p>19 tapes are accurate reflections of what was recorded</p> <p>20 on the Nice logger system at the time they were</p> <p>21 recorded?</p> <p>22 MR. COOPERSMITH: Objection. Lacks</p> <p>23 foundation. Calls for speculation.</p> <p>24 A. Yes.</p> <p>25 Q. And at the time you signed the declaration,</p>	<p style="text-align: right;">Page 125</p> <p>1 J. LLANES</p> <p>2 you were the head of the IT department at Refco?</p> <p>3 A. Which declaration?</p> <p>4 Q. Exhibit 2.</p> <p>5 MR. COOPERSMITH: Objection. Lacks</p> <p>6 foundation.</p> <p>7 MR. GUIDO: Pardon?</p> <p>8 MR. COOPERSMITH: Lacks foundation.</p> <p>9 A. At the time I signed this declaration,</p> <p>10 Exhibit 2, what was that date?</p> <p>11 Q. Is it -- or is that when you were at MF</p> <p>12 Global?</p> <p>13 A. It was when I was with MF Global, I</p> <p>14 believe. I'm trying to find a date on here.</p> <p>15 Yes, I was with MF Global.</p> <p>16 Q. But the production that was done in the</p> <p>17 Spinner -- what you understand to be the Spinner and</p> <p>18 Drillman SEC investigation and the SEC's</p> <p>19 investigation of Refco occurred at a time when you</p> <p>20 were the head of the IT department in New York for</p> <p>21 Refco?</p> <p>22 MR. COOPERSMITH: Objection.</p> <p>23 Mischaracterizes the prior testimony. Lacks</p> <p>24 foundation.</p> <p>25 A. That is correct.</p>

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Q. And when you were involved in the production of the tapes, the labels of which are attached to your first declaration, Llanes Exhibit 2, as you understood, you were producing tapes that accurately reflected what was extracted from the Nice loggers --

MR. COOPERSMITH: Objection.

Q. -- at Refco?

MR. COOPERSMITH: Objection. Leading. Lacks foundation. Calls for speculation.
A. Yes, I believe them to be either for that Spinner/Drillman case or the post Refco bankruptcy case.

Q. Did you produce these intending to mislead the SEC?

A. Absolutely not.

Q. Did you produce these to provide accurate information to the SEC?

A. I did.

MR. GUIDO: I have no further questions.

MR. COOPERSMITH: I just have a few follow-up questions, Mr. Llanes.

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EXAMINATION

BY MR. COOPERSMITH:

Q. First of all, as we discussed earlier, you were not in the New York office in 2001; is that correct?

A. That is correct.

Q. Nor were you the head of the IT department in 2001; is that correct?

A. That is correct.

Q. So in terms of what the Nice logger system was set to record or not set to record, you can't testify one way or the other as to that, can you?

MR. GUIDO: Objection.

A. In New York?

Q. Correct.

A. That is correct.

Q. And it's also true, isn't it, Mr. Llanes, that you can't testify that the recordings that were made in New York on the Nice logger system at Refco are complete recordings of everything on the trading desks, can you?

A. I do not know.

Q. Now, Mr. Llanes, one other thing. If you go to Exhibit 4, page 29 through 31, that's your

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supplemental declaration.

A. Yes.

Q. And also look at the same time, if you can, at Exhibit 2, your initial declaration.

A. Yes.

Q. I notice on Exhibit 2 you sign the declaration, and it's dated December 28th, 2007.

Do you see that?

A. Yes.

Q. Did you fill in the date?

A. Yes.

Q. And then I notice on the supplemental declaration it's dated December 6th, 2010.

Do you see that?

A. Yes.

Q. Did you type in the date on that?

A. Yes.

Q. Okay. And who -- who, if you know, typed in the /S/John G. Llanes on the supplemental declaration, page 31 of Exhibit 4?

A. That is me. I had to do it electronically.

Q. So you put that on?

A. That is correct.

Q. So explain to me how that worked? Like why

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did you sign one physically and put an electronic signature on the other one?

A. Time. My understanding was -- well, I had time to look this one over.

Q. When you say "this one," which one are you referring to?

A. Exhibit 2.

Q. Okay.

A. And I was able to sign that.

With respect to Exhibit 4, my understanding was the SEC needed this document immediately, and so I just electronically signed it. I agreed to electronically sign it.

Q. So is it fair to say that Exhibit 4, page 29 through 31 of Exhibit 4, which is your supplemental declaration, that was done, from your standpoint, in a bit of haste; is that a fair statement?

A. I suppose that's fair, yes.

Q. And is it also fair to say that you, because of that, may not have had a chance to read it over as thoroughly as you might want?

A. I had plenty of time to read it. I just didn't look over it.

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Q. And you wish you read it more thoroughly; is that what you are saying?

A. Yes.

MR. COOPERSMITH: Nothing further.

MR. GUIDO: A few clarifying questions, Mr. Llanes. I hope this is our last round.

THE WITNESS: No, that's okay.

MR. GUIDO: I don't mean to keep you.

THE WITNESS: No, as long as I'm helping.

EXAMINATION

BY MR. GUIDO:

Q. You were -- I think you were asked whether or not you were in New York City in 2001, and that I think you answered that you couldn't testify based on your personal knowledge that the tapes were accurate from New York City in 2001.

Did I hear you correctly?

A. I mean, I cannot say that I was -- I did not do any QA in terms of that, in terms of those tapes.

Q. But you did do a quality control for the tapes that you listened to when you were in Chicago; correct?

MR. COOPERSMITH: Objection. Leading.

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providing to counsel were audible.

Q. Okay. And what did you find?

A. They were fine.

Q. Was it the practice at Refco, when you were the head of the IT office in New York, to attempt to capture the complete conversations that were recorded on the Nice logger system?

MR. COOPERSMITH: Objection. Lacks foundation. Calls for speculation.

A. Yes.

Q. And is it your understanding that that was the practice in New York in 2001?

MR. COOPERSMITH: Objection. Lacks foundation. Calls for speculation.

A. I have no reason to believe why it would be any different.

Q. And when you produced the tapes to the SEC in the Spinner and Drillman case, was it your understanding that those tapes were to accurately reflect the conversations recorded on those tapes?

MR. COOPERSMITH: Objection. Calls for speculation. Lacks foundation.

A. Sorry, I was thinking ahead of you.

Ask me the question one more time.

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A. No.

Q. You didn't do a quality control?

A. To the ones that we provided?

Q. Did you review it in Chicago?

A. Did I review --

Q. Prior to 2003.

A. Did I review which ones in Chicago? I did not review --

Q. Let me rephrase the question.

A. Yes.

Q. We will accept Mr. Badian's counsel's objection, and I will try and clarify.

When you produced the tapes to the SEC, you didn't review each of them for accuracy, did you?

A. Not every single one of them, no.

Q. But you did do something to ensure yourself that they accurately reflected what was on the labels; correct?

MR. COOPERSMITH: Objection. Leading.

Q. Well, did you do anything?

A. For the 2001 tapes and recordings that we provided for the Spinner/Drillman case, I checked to see whether or not -- I spot checked, I should say, to see whether or not the recordings that we were

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Q. And when you produced -- the question was -- the problem is it keeps rolling.

And when you produced the tapes to the SEC in the Spinner and Drillman case, was it your understanding that those tapes were to accurately reflect the conversations recorded on those tapes?

MR. COOPERSMITH: Same objections.

A. Yes.

Q. Okay. Now, you were asked a question about the timing for the second declaration.

Does the second declaration accurately reflect your memory at that time of what had transpired that you recorded in that declaration?

A. My memory at that time? Yes; however, I should have proofread a couple of the words.

Q. Okay. Well, let me take you through one of the paragraphs, paragraph 6. "The method used by Refco to record, identify, and store telephone calls was essentially the same in New York and Chicago."

When you signed that declaration, did you understand that to be true?

A. Yes.

Q. Okay. Do you understand that to be true today?

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MR. COOPERSMITH: Objection. Lacks foundation. Calls for speculation.

A. Yes.

Q. Okay. And the second sentence says: "In both locations Refco maintained seating charts identifying the employee using each telephone or headset in which a microphone was located."

When you signed that declaration, did you understand that statement to be true?

MR. COOPERSMITH: Objection. Lacks foundation. Calls for speculation.

A. Yes.

MR. COOPERSMITH: As to New York?

A. Sorry.

Q. Did you understand that to be true? That's all I want to know.

A. Yes.

Q. Okay. Now and the next sentence says: "The recording process was voice activated."

Do you see that?

A. Yes.

Q. Was that true at the time you signed the declaration?

MR. COOPERSMITH: Same objection.

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A. At the time, yes.

Q. Okay. And is that your understanding today?

A. No.

Q. Why is it different?

A. It's only different, as I recall, and the only reason why I said it was voice activated, that was just in terms of if the phone in an ARD line was picked up, it just recorded.

Q. So the ARD line was what?

A. ARD line is called an auto ring down, where a broker or trader who is in the office would just pick up a phone, and it would automatically -- without having to dial specific numbers, it would just automatically ring down to a trader on the -- in the pits.

Q. So that if there was an ARD phone off the hook, it would pick up dead time?

A. It would pick up the conversations that are around that phone.

Q. Okay. But it would also record, and there would be nothing on the tape?

A. It would continue to record if there was nobody talking, yes.

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Q. So that's what you mean by modifying your testimony today based on that statement?

A. That is correct.

Q. Then the next sentence says:

"Conversations from each microphone were automatically recorded on the Nice[Log] logger to which the microphone was connected."

Was that statement true at the time you signed the declaration?

MR. COOPERSMITH: Same objections.

A. Yes.

Q. Okay. And, to your knowledge, is that true today?

A. Yes.

Q. And it says: "Several microphones were connected to the same logger, but each microphone was assigned a distinct track."

Do you see that?

A. Yes.

Q. Was that statement true at the time --

MR. COOPERSMITH: Same objections.

Q. -- you signed the declaration?

MR. COOPERSMITH: Same objections.

A. Yes.

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Q. Is that statement true today?

A. Yes.

Q. Now, it makes reference to distinct track.

Does that refer to channels?

A. That is correct.

Q. Okay. To my -- and then it says: "To my knowledge, there was never any uncertainty" as to which Refco -- "as to which Refco employee had been recorded on a particular track."

Do you see that?

A. Yes.

Q. Okay. Was that true at the time you signed that declaration?

MR. COOPERSMITH: Same objections.

A. Yes.

Q. Is that true today?

A. Yes.

Q. "The system operated continuously during business hours" is the next sentence.

Was that statement true at the time you signed the declaration?

A. Yes.

Q. Is that statement true today?

MR. COOPERSMITH: Same objections.

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A. Yes.

Q. Then it says, "When the hard drive on a logger became filled, the recordings were downloaded to cassette tapes and stored."

Was that statement true at the time you signed the declaration?

MR. COOPERSMITH: Same objections.

A. Yes.

Q. Is that statement true today?

MR. COOPERSMITH: Same objections.

A. Yes.

MR. GUIDO: No further questions.

MR. COOPERSMITH: I have nothing further.

MR. CONTI: Can I just ask a couple clarifying questions?

MR. GUIDO: Sure.

EXAMINATION

BY MR. CONTI:

Q. You've been variously referred to in conversations as the head of IT.

Were you the global head of IT at Refco?

A. No.

Q. Was there a global head of IT at Refco?

A. Yes.

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MR. CONTI: I don't have anything else.
(Time noted: 4:02 P.M.)

 JOHN LLANES

Subscribed and sworn to before me
this _____ day of _____ 20__.

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Q. You were the head of the New York office only?

A. That is correct. New York -- I'm sorry, New York and New Jersey, but it was considered New York, yes.

Q. And you've been asked a couple of times whether or not you reviewed tapes for quality assurance today.

Do you remember that?

A. Yes.

Q. Did you review those tapes for the content or just their quality of audibility, I think you said?

A. Just the quality.

Q. When you signed either of these declarations, Exhibit 2 or Exhibit 4, at the time you signed those, did you believe that any of the statements contained in these declarations were inaccurate or misleading in any way?

A. No.

(Continued on next page to include jurat.)

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C E R T I F I C A T E

I, Paula Campbell, CSR, RDR, CRR, CCP, do hereby certify that on Monday, November 21, 2011 appeared before me, JOHN LLANES.

I further certify that the said witness was first duly sworn to testify to the truth in the cause aforesaid.

I further certify that the signature of the witness to the foregoing deposition was not waived by agreement of counsel.

I further certify that I am not counsel for nor in any way related to any of the parties to this suit, nor financially interested in the action.

IN TESTIMONY WHEREOF, I have hereunto set my hand on this 23rd day of November, 2011.

 Paula Campbell, CSR, RDR, CRR, CCP
 Certified Shorthand Reporter
 Registered Diplomate Reporter
 Certified Realtime Reporter
 Certified CART Provider
 Illinois C.S.R. No. 084-003481

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17	Business Activity		
18	Exhibit 3 NICE Administrator's	41	12
19	Manual 8.9		
20	Exhibit 4 Second Declaration of	48	24
21	Kenneth J. Guido		
22	Exhibit 5 5/30/03 letter from	56	24
23	John Hewitt to Christopher		
24	Ehrman with attachment		
25	Exhibit 6 two-sided photocopy of	118	6
	the business card of John		
	G. Llanes and a note		
	Exhibit 7 5/8/03 letter from John	118	12
	Hewitt to Christopher		
	Ehrman Bates stamped		
	SECLIT 0080176 and 80177		

1 ERRATA SHEET FOR THE TRANSCRIPT OF:

2 CASE NAME: SEC vs. Badian, et al.

3 DEPOSITION DATE: November 21, 2011

4 WITNESS NAME: John Llanes

5 Reason codes:

6 1. To clarify the record.

7 2. To conform to the facts.

8 3. To correct transcription errors.

9 Page ____ Line ____ Reason ____

10 From ____ to ____

11 Page ____ Line ____ Reason ____

12 From ____ to ____

13 Page ____ Line ____ Reason ____

14 From ____ to ____

15 Page ____ Line ____ Reason ____

16 From ____ to ____

17 Page ____ Line ____ Reason ____

18 From ____ to ____

19 Page ____ Line ____ Reason ____

20 From ____ to ____

21

22 JOHN LLANES

23 SUBSCRIBED TO AND SWORN BEFORE ME

24 THIS ____ DAY OF ____, 20__.

25 (Notary Public) MY COMMISSION EXPIRES: _____